S. HRG. 98-845

TAXPAYER RIGHTS ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE
INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2400

MARCH 19, 1984

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TAXPAYERS RIGHTS ISSUES

MONDAY, MARCH 19, 1984

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF THE
INTERNAL REVENUE SERVICE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room SD-215, Dirksen Senate Office Building, the Honorable Charles E. Grassley (chairman) presiding.

Present: Senator Grassley.

[The press release announcing the hearing and a description of S. 2400 by the Joint Committee on Taxation follow:]

PRESS RELEASE

[For immediate release, Mar. 13, 1984]

U.S. Senate, Committee on Finance, Subcommittee on Oversight of the Internal Revenue Service

FINANCE SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE SETS HEARING ON TAXPAYER RIGHTS ISSUES

Senator Charles E. Grassley, Chairman of the Finance Subcommittee on Oversight of the Internal Revenue Service, announced today that the Subcommittee will hold a hearing on S. 2400. The bill, introduced by Senator Grassley, is intended to safeguard the rights of taxpayers under the Internal Revenue Code.

The hearing will be held on Monday, March 19, 1984 at 10:00 a.m. in Room SD-215 of the Dirksen Senate Office Building.

In my view, certain levy and seizure procedures merit periodic oversight to be certain they are fair and effective. "S. 2400 represents a compilation of proposals to address taxpayer grievances, it is my hope that witnesses will critically examine the provisions of this legislation and suggest improvements to safeguard the rights of taxpayers."

DESCRIPTION OF S. 2400

TAXPAYERS' PROCEDURAL SAFEGUARD ACT

Scheduled for a Hearing

Before the

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

of the

SENATE COMMITTEE ON FINANCE

on March 19, 1984

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

March 19, 1984

JCX-3-84

INTRODUCTION

The Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance has scheduled a public hearing, to be held on March 19, 1984, on S. 2400, the Taxpayers' Procedural Safeguard Act (Senator Grassley).

The first part of this document is a summary of S. 2400. The second part is a more detailed description of the bill, including present law, explanation of the bill's provisions, and effective date.

I. SUMMARY

S. 2400, the "Taxpayers' Procedural Safeguard Act," would revise extensively the procedural rules governing enforcement of the Internal Revenue Code. The bill would expand the types and amounts of property exempt from levy in satisfaction of unpaid liabilities and would provide new rights to review of Internal Revenue Service actions in levying on property or enforcing tax liens. The new review procedures would be both within the IRS and before the courts.

The bill would expand the circumstances under which a taxpayer is entitled to enter into an agreement with the IRS providing for installment payments of any unpaid liability. In addition, new procedural requirements would be imposed on IRS employees regarding all interviews with taxpayers, and the IRS would be bound by all written communications furnished by it to taxpayers.

The present rules granting courts discretionary authority to award attorneys fees and court costs in tax cases to prevailing parties other than the United States would be changed to make such awards mandatory. The present requirement that the prevailing parties demonstrate that the position of the United States was unreasonable would be changed. Under the bill, awards would be made if the position of the United States was not substantially justified, and the specific requirement that the prevailing party carry the burden of proof on this issue would be deleted.

Finally, the bill would establish a new, statutory Office of Taxpayer Ombudsman headed by an independent Presidential appointee approved by the Senate. The new Ombudsman would be permitted to issued "taxpayer assistance orders" which could prevent the IRS from carrying out otherwise permitted actions with respect to specific taxpayers.

The provisions of the bill would be effective on the date of enactment.

II. DESCRIPTION OF THE BILL

A. Levy and Distraint and Tax Lien Provisions

Present Law

Levy and Distraint

Procedural rules

In general, present law provides that levy upon (i.e., taking of) property may be made if a taxpayer neglects or refuses to pay tax within 10 days after notice and demand (Code sec. 6331). Collection of tax by levy is lawful without regard to the 10-day period, if the Internal Revenue Service finds that collection of tax is in jeopardy.

Provided that collection of tax is not in jeopardy, levy may be made upon the salary, wages, or other property of any person with respect to any unpaid liability only after the IRS has notified such person in writing of its intention to make the levy.

This notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by registered or certified mail to the taxpayer's last known address, no less than 10 days before the day of the levy. A single notice is sufficient to cover all property of the taxpayer subject to levy.

The effect of a levy on salary or wages payable to, or received by, a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable by reason of lapse of time. The IRS must release promptly such a levy when the liability out of which the levy arose is satisfied or becomes unenforceable by reason of expiration of the period of limitations, and must notify promptly the taxpayer upon whom such levy was made that the levy has been released.

Under present law, the owners of real property that is sold after a seizure, as well as their heirs, executors or administrators, or any other person having an interest therein, may redeem the property at any time within 180 days after the sale (sec. 6337).

Property exempt from levy

Present law exempts certain property from levy (sec. 6334). Among other items, this exemption covers (1) fuel, provisions, furniture, and personal effects; (2) books and tools of a trade, business, or profession; and (3) wages, salary, or other income.[1]

For a taxpayer who is head of a family, an exemption of $1,500 for fuel, provisions, furniture, and personal effects in his or her household, and for arms for personal use, livestock, and poultry is available.

A $1,000 exemption for books and tools necessary for the trade, business, or profession of the taxpayer is provided.

The exemption for wages, salary, and other income is $75 per week plus $25 per week with respect to each individual over half of whose support is received from the taxpayer, who is a spouse or dependent of the taxpayer, and who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy pursuant to a support judgment entered prior to the date of levy.

Tax Liens

If any tax is not paid when due, the full amount of the liability (tax, interest, and penalties) is a lien in favor of the United States against all property of the taxpayer owing the liability (sec. 6321). This lien arises automatically, but present law provides numerous rules governing the priority of the the lien as against interests of third parties also having an interest in the property (sec. 6323).

A lien imposed with respect to any tax must be released no later than 30 days after either (1) the liability for the amount assessed, together with all interest and penalties in respect thereof, has been satisfied fully or has become legally unenforceable, or (2) acceptance of a bond that is conditioned upon the payment of the amount assessed, together with all penalties and interest (sec. 6325). Present law provides no appeal of a lien separate from the right to challenge assessment of the underlying liability.

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[1] Wearing apparel and school books, unemployment benefits, undelivered mail, certain annuity and pension payments, workmen's compensation, and judgments for support of minor children are also exempt from levy under this provision.

Amount of damages in case of wrongful levy

In the case of an alleged wrongful levy, a person (other than the taxpayer against whom is assessed the liability out of which such levy arose) who claims an interest in, or lien on, the property levied upon may bring a civil action against the United States in a U.S. district court (sec. 7426). If the court determines that there has been a wrongful levy, then the court may (1) order the return of the property if the United States is in possession thereof; (2) grant a judgment for the amount of money levied upon; or (3) if the property has been sold, grant a judgment for an amount not exceeding the greater of the amount received by the United States from the sale or the fair market value of the property immediately before the levy.

Explanation of Provisions

Levy and distraint

Procedural rules

The bill would amend the rules pursuant to which the Internal Revenue Service enforces payment of tax by levying on a taxpayer's property in several ways. First, the bill would increase the period that the IRS must wait before levying after notice of the levy has been sent to the taxpayer from 10 days to 30 days. As under present law, the waiting period would not apply in cases where collection of the liability was in jeopardy.

Second, the bill would provide that specific disclosures must be made in all notices of levy. These notices would be required to describe the levy provisions of the Code and the procedures (including appeal rights) pursuant to which a levy occurs. Additionally, all alternatives available to the taxpayer, including methods by which property may be redeemed and tax liens released would have to be disclosed in the notice of levy.

Third, the bill would expand the circumstances under which a continuing levy on a taxpayer's salary or wages would terminate. Under the bill, the levy would terminate if the taxpayer and the IRS entered into an agreement for installment payment of the unpaid tax liability (see Part II. B.) or if the IRS determined that the liability was unenforceable due to the financial condition of the taxpayer.

The bill does not establish guidelines for determining when a taxpayer would be determined to be financially unable to pay a liability to an extent justifying termination of a continuing levy on salary or wages.

Fourth, the IRS would be precluded from taking property in payment of a liability if the expenses associated with the levy were greater than the value of the property or the liability to be satisfied. Additionally, a levy could not be made on any day on which a taxpayer responded to a summons issued by the IRS.

Fifth, the Treasury Department would be directed to prescribe regulations establishing new rules for determining the minimum price at which property levied upon would be sold. The bill would direct that these regulations not limit the minimum price to the amount of the liability for which the sale is made, the expenses of the levy, or any combination of the two.

Property exempt from levy

The bill would expand the types and amounts of property which are exempt from levy. The amount of exempt fuel, provisions, furniture, and personal effects would be increased from $1,500 to $20,000. Additionally, animals in addition to livestock and poultry (presently exempt) would be exempt within this category. Property of a trade or business would be exempt to the extent of $10,000, but only if the trade or business was not a corporation.

The amount of salary or wages exempt from levy would be increased to $200 per week plus $50 per week for the taxpayer's spouse and each dependent other than a minor child with respect to whom a support order existed. Income exempt from levy would continue to be exempt if the income were deposited in a bank or other savings institution to the extent that the deposit (or share purchase) occurred within thirty days after receipt of the exempt funds.

Under the bill, a taxpayer's principal residence, a motor vehicle used as a primary source of transportation for commuting to and from the taxpayer's place of business, and any tangible personal property the taking of which would preclude the taxpayer from carrying on his trade or business would be exempt from levy except in certain cases. This property could be taken for payment of tax only if a district director or assistant district director of internal revenue personally approved the levy or if collection of the tax were determined to be in jeopardy.

Release of levy

Specific new standards would be provided for determining when a levy would be released. Under the new rules, the IRS would be required to release a levy if,

(1) the unpaid liability was paid;

(2) the release of levy would otherwise facilitate collection of the liability;

(3) the taxpayer entered into an agreement to pay the liability in installments (see Part II. B, below);

(4) the expenses of the levy and sale of property exceeded the amount of unpaid liability;

(5) the taxpayer was prevented by the levy from meeting necessary living expenses; and

(6) the value of the property levied upon exceeded the unpaid liability and the release could occur without hindering collection of the liability.

The bill does not define the term "necessary living expenses" for purposes of Item 5, above.

Tax Liens

The Treasury Department would be directed to prescribe regulations within 180 days of enactment of the bill to implement a procedure for administrative appeal of any lien imposed on a taxpayer's property. The bill would not otherwise change the rules under which a lien for unpaid tax attaches to property or the priority of such a lien as compared to other interests in the property.

Taxpayer actions against IRS procedural violations

The provisions of present law permitting administrative and judicial review of assessments of tax and wrongful levies would be expanded. The bill would authorize any taxpayer to bring a civil action in United States district court if a lien were imposed or levy made on the taxpayer's property in a manner violating the procedures established by the Code. The taxpayer would be required to have filed a written request with the IRS Taxpayer Ombudsman for an order to stop the lien or levy (see the discussion in Part II. E., below) as a prerequisite for bringing action. The district court could provide any remedy which it determined appropriate.

B. Time for Payment of Tax

Present Law

In general, any tax is required to be paid in full by the date the return for the tax is due to be filed (sec. 6151). Numerous exceptions are provided to this rule. Some of these exceptions require advance payments through periodic deposits as payments are made or received (e.g., payroll tax withholding). Other exceptions provide that, at the election of the taxpayer, tax may be paid in installments after the due date otherwise established for filing a return of the particular tax. Examples of taxes that may be paid in installments after the return due date are the highway use tax (sec. 6156) and estate tax attributable to certain interests in closely held businesses (sec. 6166). Finally, the Internal Revenue Service generally has discretion to extend the time for payment of tax for a reasonable period not exceeding 6 months (12 months in the case of estate tax) (sec. 6161).

Explanation of Provisions

The bill would specifically authorize the IRS to enter into written agreements with any taxpayer providing for installment payments of tax in any case where IRS determined that such an agreement would facilitate the collection of tax. In addition, the bill would require the IRS to make a written offer of such an agreement to any individual whose tax liability did not exceed $20,000 and who had not been delinquent in payments under any other similar agreement entered within the three years preceding the due date of the currently unpaid tax liability.

Agreements under this new provision would be binding on the IRS unless the Service showed that the information provided by the taxpayer prior to the date of agreement was inaccurate or incomplete. Additionally, if the financial condition of the taxpayer changed subsequent to the agreement, the IRS could alter or annul the agreement. Before an agreement could be unilaterally changed by the IRS, however, the taxpayer would be entitled to a hearing.

C. Provisions Affecting IRS Communications with Taxpayers

Present Law

Written communications

The Internal Revenue Service communicates with taxpayers using numerous written and oral means. The principal written methods are tax regulations, revenue rulings and ruling letters, forms and publications, and letters in response to taxpayer inquiries. In addition, the IRS conducts an extensive taxpayer service program through which agency employees respond to taxpayer problems orally.

Tax regulations, revenue rulings, and ruling letters

The broadest form of written communication provided for taxpayers by the IRS is tax regulations. Tax regulations provide general interpretations of the Code and are subject to extensive review before adoption as Treasury decisions. Tax regulations generally are published in proposed form before being adopted. Once adopted, tax regulations are binding on the IRS with respect to all taxpayers. A tax regulation may be withdrawn by the IRS at any time the Service determines that it is no longer appropriate by publication of notice in the Federal Register.

The Internal Revenue Service publishes revenue rulings and procedures in the Internal Revenue Bulletin. Revenue rulings and procedures, like Treasury decisions, may be cited as precedent and the positions taken in them generally are binding on the IRS. These interpretations apply the tax law to a specific fact pattern rather than providing broad, general rules. Rulings and procedures generally are are subject to review by many of the same offices that review regulations. Typically, however, revenue rulings and procedures are not published in proposed form before being adopted.

The IRS also interprets the tax law through ruling letters and technical advice memoranda. These interpretations generally are subject to less review than regulations and revenue rulings. Ruling letters are issued to a specific taxpayer and may be relied upon only by that taxpayer and only with regard to the specific transaction addressed by the letter.

Forms and publications

The IRS regularly reviews and publishes all forms and schedules necessary for filing returns for the various taxes imposed under the Internal Revenue Code. These forms range from the Form 1040 (income tax) to Form 706 (estate tax) and Form 720 (excise taxes). Instructions are provided for each form published by IRS. In addition, the IRS publishes and distributes, free-of-charge, more than 90 booklets on specific tax topics. These booklets are reviewed and revised regularly to reflect the most recent changes in the tax law.

Taxpayer service programs

The Internal Revenue Service conducts a year-round tax information program in each of its regions, internal revenue districts, internal revenue service centers, and in various foreign countries (through the IRS Office of International Operations). The basic assistance part of the program is operated by a taxpayer service division. Assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers.

Taxpayer assistance is provided by three principal methods: (1) telephone assistance; (2) assistance to taxpayers who walk into an IRS office; and (3) taxpayer information and education programs, including programs directed toward special groups.

Telephone assistance

A toll-free telephone network allows taxpayers to call IRS personnel for tax assistance. This service covers all of the United States, Puerto Rico, and the Virgin Islands. In addition, toll-free assistance is provided to deaf and hearing-impaired taxpayers through a television/telephone/typewriter system.

Walk-in taxpayer assistance

The walk-in taxpayer assistance program is available both at permanent and temporary (during the filing season) sites located throughout the country. The scope of the

program includes answering taxpayer questions, furnishing tax forms and publications, and assisting in preparation of returns for taxpayers.

Taxpayer information and education

In addition to its telephone and walk-in assistance programs, the IRS conducts a year-round public information program with special emphasis on the filing period (January through April). This program includes training participants in several volunteer programs and supervising the programs, directing educational programs for taxpayers, and preparing media efforts for targeted groups and the general public.

The Volunteer Income Tax Assistance Program (VITA), begun in 1969, provides assistance in completing tax returns to low-income, elderly, and non-English speaking persons who may have difficulty obtaining assistance from paid tax return preparers or IRS walk-in assistance personnel. Community volunteers are trained by the IRS in simple tax return preparation skills. The individuals then offer free tax return preparation assistance in neighborhood locations throughout the country.

Tax Counseling for the Elderly, a similar volunteer program, was established by the Revenue Act of 1978 to help meet the special tax needs of persons aged 60 and older. Under this program, the IRS enters into agreements with selected nonprofit organizations which provide volunteers to furnish tax assistance to the elderly. The volunteers are reimbursed by the IRS, through the sponsoring organizations, for out-of-pocket expenses incurred in providing the assistance.

The Student Tax Clinic Program is conducted at certain colleges and universities across the country. Under this program, law and graduate accounting students represent low-income taxpayers before the IRS in examination and appeals proceedings.

Small Business Workshops are conducted in each internal revenue district to educate owners of small businesses, and institutes are available in most districts for tax practitioners on recent tax developments which may affect them.

Disaster and Emergency Assistance Programs are conducted by the IRS in cooperation with other government agencies to provide specialized tax assistance to recent victims of major disasters and emergencies.

The "Understanding Taxes" program provides free student

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publications to high schools. Additionally, under this program, IRS employees also meet with teachers to explain the publications and answer questions on tax laws and procedures.

Other Investigations and Return Examinations

The IRS annually investigates millions of cases of suspected civil and criminal violations of the tax law. These investigations may arise from a routine examination of a taxpayer's return or as a result of receipt of other evidence of violations of the tax law.

To enforce compliance with the tax law, the IRS also examines or "audits" selected tax returns. Returns generally are selected for examination as a result of a high score on a computer program designed to detect improperly claimed deductions or credits, as a result of underreported income discovered by matching payor information returns (e.g. Forms 1099) with tax returns, or through the IRS' Taxpayer Compliance Measurement Program (TCMP). Most IRS communications in these programs involve suspected civil, as opposed to criminal, violations of the tax law.

Explanation of Provisions

Reliance on IRS written advice

The bill would provide that all written advice furnished by any employee of the IRS acting in an official capacity would be binding upon the Service if the information were provided in response to a specific request by the taxpayer and the taxpayer did not provide inadequate or inaccurate information to the IRS. Therefore, the IRS generally could not collect any deficiency (including interest and penalties associated with any deficiency) which resulted from its incorrect written advice.

Rules governing IRS contacts with taxpayers

The bill would establish new rules governing all interviews with taxpayers conducted by the IRS. Under the new rules, the IRS would be required to conduct interviews at "a reasonable time and place convenient to the taxpayer" and to allow the taxpayer to make a recording of the interview. IRS personnel could likewise record interviews provided they informed the taxpayer that the recording was being made and provided the taxpayer with a transcript of the interview upon

request. Taxpayers requesting transcripts would be required to pay the costs of reproduction.

New procedural warnings would be required before any interview with a taxpayer could be conducted by the IRS. Under this new rule, taxpayers would be advised that they had the right to remain silent, that any statement that they made could be used against them, and that they had the right to the presence of an attorney or accountant. These warnings are similar to those provided persons suspected of criminal activity under present law. Under the bill, however, the warnings would apply as well to interviews where no specific violation of civil or criminal law was suspected.

D. Awards of Attorneys Fees and Court Costs

Present Law

Present law generally provides that taxpayers who prevail in civil tax actions in which the position of the United States was unreasonable may be awarded reasonable litigation costs (including attorney's fees) up to a maximum of $25,000. An award of reasonable litigation costs to the prevailing party in a civil tax action is discretionary with the court hearing the action. The determination of whether the position of the United States was unreasonable is made by the court or by agreement of the parties. A taxpayer is considered to have prevailed in an action if the taxpayer has established that the position of the United States was unreasonable and has prevailed (1) with respect to the amount in controversy of (2) has substantially prevailed with respect to the most significant issue or set of issues in the action.

Litigation costs may be awarded in civil actions or proceedings brought by or against the United States (or any agency, officer, or employee of the United States acting in his or her official capacity) in any United States court, including the Tax Court, in connection with the determination, collection, or refund of any tax, interest, or penalty. Civil actions and proceedings include proceedings to enforce a summons, jeopardy assessments, wrongful levies, and interpleaders (i.e., generally, a proceeding to enable a person to compel parties making the same claim against him or her to litigate the matter between them).

Most parties who are plaintiffs or defendants in actions brought in connection with the determination, collection, or refund of any tax, interest, or penalty imposed by the Internal Revenue Code may be eligible for these awards. However, under present law, no award can be made to the United States or to any creditor of the taxpayer. Thus, for example, awards would not be made to creditors of a taxpayer in interpleaders, wrongful levy actions, and lien priority cases.

Explanation of Provisions

The bill would make mandatory the award of attorneys fees and court costs to taxpayers who prevail in civil actions and proceedings against the Internal Revenue Service. Awards of these fees and costs would be made in all cases where the position of the United States was not "substantially justified." The definition of prevailing party would remain the same as under present law except the burden of proving that the United States was not substantially justified in its position would not be specifically placed upon the taxpayer. (Under present law, taxpayers are specifically required to demonstrate that the position of the United States was unreasonable.)

E. Problem Resolution Program and Office of Taxpayer Ombudsman

Present Law

In 1977, the Internal Revenue Service implemented a taxpayer complaint handling system, known as the Problem Resolution Program (PRP), in each of its districts. Under this program, there is a problem resolution officer in each district who reports directly to the district director. In 1979, this program was expanded to cover all internal revenue service centers, as well as district offices.

The program was established to handle taxpayers' problems and complaints not promptly or properly resolved through normal administrative procedures, or those problems which taxpayers believe have not received appropriate attention. In addition, the program provides for the analysis of problems resolved by it to determine their underlying causes so corrective action can be taken to prevent their recurrence.

In 1979, the IRS established a Taxpayer Ombudsman in the Office of the Commissioner of Internal Revenue. The Ombudsman works under the direct supervision of the Deputy Commissioner of Internal Revenue. The responsibilities of the Ombudsman include the administration of the Problem Resolution Program; representation of taxpayer interests and concerns within the IRS decision-making process; review of IRS policies and procedures for possible adverse effects on taxpayers; proposal of ideas on tax administration that will benefit taxpayers; and representation of taxpayer views in the design of tax forms and instructions.

Explanation of Provisions

The bill would establish an Office of Ombudsman within the Internal Revenue Service. The office would be headed by an independent Ombudsman appointed by the President and confirmed by the Senate. The responsibilities of the new Office of Ombudsman generally would be similar to those performed by the present administratively appointed Ombudsman through the Problem Resolution Program.

In addition to these responsibilities, the new Ombudsman would be authorized to issue "taxpayer assistance orders" requiring the IRS to cease certain actions with respect to specifically identified taxpayers. Under the bill, the Ombudsman could direct the IRS to release property which had been levied upon, to cease any collection action or other action relating to discovery of taxpayer liability, or to cease any other action otherwise authorized under any other provision of law.

F. Effective Date

The provisions of the bill would take effect on the date of enactment.

Senator GRASSLEY. Good afternoon, everybody. I would like to welcome you to the Subcommittee on IRS Oversight of the full Committee on Finance. The purpose of this meeting today is to discuss S. 2400, a bill which contains a series of expanded taxpayer protections. This legislation includes new refinements—a current levy and seizure procedure provisions, guidelines for installment agreements, new rules regarding the binding nature of IRS written and oral advice, redefinition of the role of the ombudsman, and civil remedies for taxpayers in the case of a wrongful levy by the IRS or third parties.

At the outset, I would like to thank Senator Baucus and Senator Levin for their leadership in this realm. Senator Baucus has introduced legislation in prior Congresses and has chaired hearings on this topic as a former chairman of this subcommittee.

Senator Levin has been a forceful advocate for taxpayers' rights. He has researched this issue at length, and his participation in these hearings is helpful to the subcommittee. He brings a great deal of experience to bear on this complicated problem.

S. 2400 requires the IRS to give the taxpayer written notice of the demand for levy, not more than 30 days and not less than 10 days, before levy. Current law requires only 10 days.

Additionally, my bill requires the IRS to give taxpayers a detailed description of their rights during a levy proceeding, and outlining their rights to redeem property or gain a release of the levy.

It increases the amount of taxpayers' property and wages which are exempt from levy. And prohibits the service from levying when the cost of selling the asset exceed the asset's value or the amount of the taxpayer's liability.

Also this bill expands the jeopardy assessment procedures to jeopardy levies and grants the taxpayer a civil remedy if he or she is the subject of a wrongful levy. S. 2400 limits the ability of the IRS to disregard an installment agreement. Unless the taxpayer provides the IRS with inaccurate information or the taxpayer's economic fortunes dramatically improve installment agreements are binding.

Written advice provided by the IRS is also binding and the recipients of oral advice should be cautioned that such advice is nonbinding.

Lastly, my bill sets forth taxpayers' rights during interviews and requires them to be conducted at a mutually convenient time and place. S. 2400 also defines some of the duties of the ombudsman and grants the ombudsman the power to intervene on behalf of taxpayers to prevent the miscarriage of justice.

Oversight subcommittees should examine current agency practices to be certain that they are both fair and effective. The IRS, of course, is charged with collecting delinquent Federal tax accounts, a difficult and nonpopular task. The procedures they use in collecting these accounts is of great concern to all Members of Congress.

Nevertheless, many members of the Committee on Finance are concerned that approximately $20 billion of delinquent tax accounts are uncollected. With annual deficits of $200 billion, many members of the committee are anxious to see the IRS collect bad debts rather than raise the taxes on honest taxpayers. Our goal is

to assist the IRS in collecting as many delinquent accounts as possible without trampling the civil liberties of taxpayers.

Many of the provisions within S. 2400 have been suggested in the past by concerned taxpayers and incorporated into this legislation. Other provisions are new and need committee discussion. It is my hope that we can arrive at a workable list of provisions which protect individual rights, yet enable the Service to collect outstanding debts.

With that introduction, I would like to now go to Senator Levin who I have already complimented in my opening statement. And once again, ask him to proceed as he has been so willing to do, not only before this committee but also as we have worked together on the subject of congressional veto where I sit as a member of the Senate Judiciary Committee.

Senator Levin.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you, Mr. Chairman.

First let me congratulate you for what you are doing here. It is just critical that we try to take some action relative to taxpayers' rights. We know that taxpayers have responsibilities. Most of them carry out those responsibilities, certainly, to a very large extent, and they pay great amounts of taxes in this country. We all should pay our fair share of taxes. Some of us in the Congress are making efforts to make sure that as a matter of fact, people who earn large sums of money pay some taxes. And many of us are working on things like minimum tax bills.

But this is an area where every taxpayer has an interest because while we all have responsibilities to pay a fair share of taxes, what this bill says is that we all have some rights too.

We have given the IRS some extraordinary powers in the area of seizure and levy, and we have got to make sure that those powers are exercised reasonably. There have been abuses. There have been arbitrary and capricious uses of those powers by the IRS, and we must make sure as a legislative body that the IRS does not exceed what is properly a proper exercise of authority. That's what this bill is all about.

A few years ago in July 1980, along with Senator Cohen, I chaired a hearing held by the oversight subcommittee of the Governmental Affairs Committee, into IRS abuses. We found that the IRS abused the seizure and lien provisions and put many small business people out of business needlessly. That they were not thereby adding any dollars to the Federal treasury, but what they were doing was, in fact putting people out of business who should not have been put out of business. These are people who committed no fraud, who committed no crime; that simply were in debt to the U.S. Government; and their ability to pay off those debts was jeopardized, indeed terminated, by these lawless, arbitrary, capricious seizures of their assets and their businesses.

For instance, one of the problems which this bill will cure is a problem where the IRS enters into an agreement with somebody to pay off an indebtedness on an installment plan. During our 1980

hearing, we received testimony which was unrefuted and which we know was accurate from a businessman by the name of Richard Dyke. He was a small business consultant, and he incurred a $20,000 tax arrearage. By the way, through no fault of his own, may I say. In this case, he was the victim of an embezzlement. But, nonetheless, there was an arrearage that his company owed. And when this problem was discovered, Mr. Dyke made arrangements with the IRS for repaying the delinquency. And he entered into an oral agreement with an IRS revenue officer which was not disputed by the IRS that required the company would pay $2,000 monthly on the deliquency.

This arrangement went onward for perhaps 6 or 7 months. All payments were made faithfully by Mr. Dyke. But then without warning, even though he was making these payments, the IRS went into the company's bank and seized the balance owing on the account.

Now the first notice that the taxpayer had of this action was when his bank notified him that the account had been seized by the IRS. If there is anything we ought to insist upon, I would think, it is that the Government keep its commitment and its word. Here we have an agency of the Government which felt that it was not bound by a commitment. The taxpayer kept his side of the deal. However, the IRS felt no obligation whatsoever to keep its side of the deal.

We also found during those hearings back in 1980 that the IRS had a penchant for seizure and enforcement. And as a matter of fact, was putting pressure on its agents to needlessly seize assets of taxpayers who otherwise would have been able to stay in business, and, indeed, pay the Treasury the back taxes which were owing to it. And that the IRS officers, were frequently pressured by their superiors and supervisors into seizing taxpayer property which they did not believe should be seized, and which they knew would result in a loss of dollars to the Treasury because it would mean putting somebody needlessly out of business who should not have been put out of business.

As a result of some of these abuses—and I have mentioned only a few—I introduced Senate bill 1032. It was referred to the Finance Committee, and parts of that bill were happily made into law and incorporated into TEFRA, but a number of provisions were not.

Now you have introduced a comprehensive bill. And I congratulate you for it. You have incorporated many, many reforms which must be made into law. You have included in that—and I'm delighted—some of the ones that had not been previously picked up from that old S. 1032. And, again, I congratulate you for what I think is a comprehensive vision in the area of IRS reform.

I'm delighted to be your cosponsor on S. 2400. You are on the right track. We are going to provide a civil suit for taxpayers whose rights are abused. We are going to give them remedies when the IRS breaks their agreements with taxpayers. And S. 2400 is for the first time going to provide some really comprehensive rights to taxpayers. Again, we know all the responsibilities of taxpayers, but we must make sure that in addition to insisting that people pay taxes and taxes that are owing, that it is also understood in this land of limited government that all parts of our government, in-

cluding the IRS, must live under law and must obey some reasonable semblance of due process and must not abuse the powers which have been given to them. Again, very extraordinary powers of seizure and lien. And this bill put some limits on those powers. It is a very wise effort to put some kind of restraints and constraints on what otherwise are the too unlimited powers of the IRS.

I would ask that my entire statement be made a part of the record. And, again, I want to commend you, Senator Grassley, for the leadership which you have shown and continue to show in the area of IRS and taxpayer rights.

Senator GRASSLEY. Your entire statement will be included.

[The prepared statement of Senator Levin follows:]

March 16, 1984

CVH

STATEMENT OF SENATOR CARL LEVIN BEFORE THE SENATE FINANCE SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE MARCH 19,1984.

Mr. Chairman, thank you for this opportunity to testify. I am here today to voice my support for S.2400, a taxpayer's rights bill that you introduced (and I co-sponsored), and to urge the other members of the Subcommittee to support this piece of legislation. The need to safeguard the rights of taxpayers is very important and this legislation meets that need.

On July 13, 1980, I chaired a hearing held by the Governmental Affairs Subcommittee on Oversight of Government Management, of which I am currently the Ranking Minority Member, to investigate the collection practices of the IRS and their impact on small businesses The investigation was initiated in response to complaints from small business owners and IRS officers regarding the IRS's arbitrary and capricious use of lien, levy and seizure authority to collect delinquent taxes. During the hearing, the Subcommittee found that liens were being issued against taxpayer's bank accounts and receivables, even where the revenue officers had agreed to an installment pay plan which the taxpayer had not violated. These practices are particularly egregious to small business taxpayers who need to have their assets unencumbered, and who rely on the representations of the IRS and then suddenly find themselves

faced with a seizure or levy which eliminates their cash reserves and irrevocably damages their credit-worthiness. These individual are not crooks; they are not out to defraud the government or avoid paying less than their rightful share of taxes. These individuals admit their liabiltiy and agree to pay it off. The only question is how and when it will be paid For the small business man or woman, the installment pay plan ofte provides the only viable means by which they can pay-off their tax liability and still continue to operate their business, which is not only of mutual benefit to the delinquent taxpayer and the IRS, but to taxpayers in general who must ulimately bare the cost of uncollected taxes.

Evidence of the IRS's abuse of its enforcement authority was clearly demonstrated in cases uncovered by the Subcommittee during its investigations — such as the case of Mr. Maurice Bishop, a Michigan businessman. Mr. Bishop's business suffered an embezzlement and accrued a $40,000 tax indebtedness before the embezzlement was discovered. The IRS placed a lien on virtually everything that Mr. Bishop owned except his personal residence. The total value of the property attached amounted to approximately $400,000 for a $40,000 indebtedness, or ten times the indebtedness. And even when half of the delinquency was paid in cash the IRS refused to discharge any of Mr. Bishop's property from the liens. Another example was that of the case of Mr. Richard Dyke, a Maine businessman and small business consultant. As a result of an embezzlement, Mr. Dyke's commpany incurred a $20,000 tax

arrearage. When the problem was discovered, Mr. Dyke promptly informed the IRS and made arrangements for repaying the delinquency. It was orally agreed to with a IRS revenue officer that the company would pay $2,000 monthly on the delinquency. This arrangement went from November 1979 until June 1980. All payments were made faithfully. But then without warning the IRS went into the company's bank and seized the balance of $9,000 due on the account. The first notice that Mr. Dyke received of this action was when his manager received a slip from the bank indicating that the account had been charged $9,000. This action nearly caused the business to lose many of its business relationships, contracts and confidences it had developed with its vendors.

At the time of the hearing the evidence also indicated that the IRS had a penchant for seizure and enforcement statistics, and sometimes pressured its officers to seize taxpayer property, in contradiction to their training and good sense, with little or no attention to considerations of the amount of money collected, the extenuating circumstances of the taxpayer, or stated IRS policy.

As a result of this hearing, I introduced a bill, S.1032, in an effort to alleviate some of the problems that we had discovered. S.1032 was referred to the Finance Committe and parts of the bill were subsequently incorporated in TEFRA, the "Tax Equity Fiscal Responsibility Act of 1982." However, two of the provisions of S.1032 were not incorporated into TEFRA, namely the "Installment Pay Plan" provision and the "Civil Action by Taxpayers" provision. These two provisons are very im-

portant and I believe that they need to be enacted into law. For this reason I was going to introduce these two provisions in the form of my own bill later this year. However, in drafting your legislation Mr. Chairmen, you saw fit to include these provisions , and thus I feel no need to introduce a separate bill, but rather have placed my support behind S. 2400.

The two provisions that I have spoken about, would prohibit the IRS from precipitously reneging on their installment agreements and levying or seizing taxpayer property, as long as, the taxpayer does not violate the terms of the agreement, and provide the taxpayer with an avenue for judicial recourse when the IRS violates its agreements with the taxpayer or violates or abuses its own collection procedures.

The forcible collection authority of lien, levy and seizure conferred on the IRS are extremely powerful. They play an important role in the IRS's collection ability and are necessary to ensure that taxpayers will not ignore the Federal tax system. However, these powers must not be abused or applied arbitrarily, the taxpayer should be able to take the IRS and their government at its word.

S.2400, and in particular the "Installment Pay Plan" and Civil Action by Taxpayers" provisions, will in no way reduce the IRS's ability to properly pursue their collection procedure program, but protects taxpayers from the arbitrary administration of those programs and procedures and irregular collection methods.

Senator GRASSLEY. I only have a question in the way of bringing attention to something you already spoke of—the need for change in increased levy and seizure procedural safeguards. I think it's the important aspect you have been zeroing in on. Tell me the circumstances that have brought about the need for these changes.

Senator LEVIN. Well, we find in many cases that assets are being seized way beyond what is necessary to be seized. So we have situations where more assets are being seized and have to be. That, obviously, damages a business. We also find situations where there is no equity in the asset whatsover where they are being seized. The IRS can't get anything out of them, can't squeeze the dollars that are owed to the IRS out of them. But what it can do is put someone out of business who otherwise could earn the money to make the payments owing to the IRS.

So it addresses the question of the so-called no equity seizures, which I think are unjustified. And we saw many instances of that, by the way, in our hearings. Where the IRS was seizing materials that had absolutely no equity in them, where the IRS could not gain any dollars from them, which could only result in somebody being put out of business, an ongoing business shut down. Taxpayers' moneys that are owing to the Treasury were not being collected. And people being put out of work. So it handles the no equity seizures; it handles the excessive levies and seizures as well. And I think it's important that this be addressed.

Senator GRASSLEY. Thank you very much.

Senator LEVIN. Thank you.

Senator GRASSLEY. Look forward to any other reactions you have as you study the testimony given before this hearing or any other sorts of information you might refer to as we continue to work on the legislation.

Senator LEVIN. Thanks again.

Senator GRASSLEY. Thank you.

I now have the pleasure of calling to the witness table Commissioner Roscoe Egger. And I want to say, Commissioner Egger, that, as I have probably said before, so I don't need to tell you how much I appreciate your being open on the subjects that we bring up. Some of the things I'm sure we suggested you look upon as making your job more difficult. On the other hand, I know that you have expressed to me concern that your agency collect taxes in a way that considers personal regard, and particularly the law being followed. And I appreciate that healthy attitude, and your being open and your willingness to discuss any of these points that we have. And it's a very refreshing attitude that I sense in you as you try to also be concerned about the public relations of the agency and the people that you supervise.

STATEMENT OF HON. ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE SERVICE, WASHINGTON, DC

Commissioner EGGER. Thank you, Mr. Chairman. I certainly want you to know that we stand ready at all times to discuss in whatever detail you care to do all of the procedures that we follow as well as those things which sometimes become rather controversial.

Senator GRASSLEY. Yes.

Commissioner EGGER. I'm pleased to be here today, and to offer our comments on S. 2400. We would also like to make some general observations on this whole subject.

We appreciate the opportunity to present our views on this very important matter. Throughout our statement we will refer to S. 2400. However, on Friday afternoon we did receive a revised draft of the bill, and we have tried to amend our testimony to account for the changes in Friday's draft. But, unfortunately, time didn't permit us to get this over through the Office of Management and Budget for their review before now.

Senator GRASSLEY. From that standpoint, let me make an announcement not only for you but everybody else. As a matter of standard procedure in committees that I chair, the record will stay open for 15 days. That gives you an opportunity to make any corrections in your testimony or response to the revision of the bill as necessary. It also gives members who can't be here today an opportunity to submit questions in writing. We would appreciate that those be responded to by each participant at the witness table, and each person on the witness list as the day goes on. That is also within 15 days.

Commissioner EGGER. Within the next day or so, Mr. Chairman, we will provide you with a much more comprehensive statement for the record than the one that I will be presenting here orally.

[The prepared statement of Commissioner Egger follows:]

STATEMENT

OF

ROSCOE L. EGGER, JR.

COMMISSIONER OF INTERNAL REVENUE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

SENATE FINANCE COMMITTEE

MARCH 19, 1984

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR BEFORE YOU TODAY TO OFFER OUR COMMENTS ON S. 2400, THE TAXPAYERS' PROCEDURAL SAFEGUARD ACT. WE WOULD LIKE ALSO TO MAKE SOME GENERAL OBSERVATIONS ON THIS WHOLE SUBJECT. WE APPRECIATE THE OPPORTUNITY TO PRESENT OUR VIEWS ON THIS IMPORTANT MATTER.

THROUGHOUT OUR STATEMENT WE REFER TO S. 2400. HOWEVER, ON FRIDAY AFTERNOON, WE RECEIVED A REVISED DRAFT OF THE BILL. WE HAVE TRIED TO AMEND OUR TESTIMONY TO ACCOUNT FOR CHANGES IN FRIDAY'S DRAFT. UNFORTUNATELY, TIME HAS NOT PERMITTED THE OFFICE OF MANAGEMENT AND BUDGET TO ADVISE US AS TO THE RELATIONSHIP OF THE TESTIMONY TO THE PROGRAM OF THE PRESIDENT. SIMILARLY, THE SHORTNESS OF TIME HAS MADE IT IMPOSSIBLE TO PROVIDE A COMPREHENSIVE WRITTEN STATEMENT ON S. 2400. WE

INTEND PROVIDE THE SUBCOMMITTEE WITH OUR WRITTEN COMMENTS AS SOON AS POSSIBLE.

WE APPRECIATE AS WELL YOUR COOPERATION IN ARRANGING THE GROUND RULES FOR TODAY'S HEARING. AS YOU KNOW, I AM PREVENTED BY STRICT RULES OF CONFIDENTIALITY FROM DISCLOSING TAXPAYER INFORMATION. AS I UNDERSTAND THE RULES WHICH YOU HAVE PROVIDED, ANY WITNESS WHO TESTIFIES ON SPECIFIC TAX INFORMATION MUST PROVIDE A WAIVER OF CONFIDENTIALITY SO THAT ALL OF THE FACTS CAN BE MADE A MATTER OF RECORD, THUS AVOIDING THE POSSIBILITY OF BIAS IN ANY EXAMPLES.

WITH ME TODAY ARE LARRY WESTFALL, THE ASSISTANT COMMISSIONER (COLLECTION), AND GEORGE O'HANLON, THE TAXPAYER OMBUDSMAN. WE WILL ALL BE AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE AT THE CONCLUSION OF MY TESTIMONY.

IRS COMMITMENT TO TAXPAYER SAFEGUARDS

MR. CHAIRMAN, NO AGENCY IN GOVERNMENT IS MORE COMMITTED TO NOR MORE CONCERNED WITH THE ISSUE OF TAXPAYERS' RIGHTS THAN IRS. THE PROCEDURES AND SAFEGUARDS WE HAVE IN PLACE ARE DESIGNED IN GREAT DETAIL TO ASSURE FAIR TREATMENT OF TAXPAYERS. THE SUCCESS OF OUR SELF-ASSESSMENT SYSTEM IS BASED LARGELY ON TAXPAYER COOPERATION AND A WILLINGNESS TO WORK WITH THE IRS IN RESOLVING PROBLEMS OF TAX DELINQUENCY.

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NOTHING THE IRS DOES IS MORE DIFFICULT THAN KEEPING THE SYSTEM OPERATING IN A "FAIR BUT FIRM" WAY. OF OUR MILLIONS OF TAXPAYER CONTACTS EVERY YEAR, THE OVERWHELMING NUMBER ARE COMPLETED WITHOUT INCIDENT. OTHERS ARE VERY PERSONAL, AND A VERY FEW ARE CONFRONTATIONAL IN NATURE. THESE LATTER FEW ARE UNFORTUNATE AND REGRETABLE, AND THERE MAY BE A FEW - HUMAN NATURE BEING AS IT IS - THAT MAY BE INEVITABLE. WE ENDEAVOR TO TAKE EVERY STEP POSSIBLE TO AVOID THIS AND TO SAFEGUARD TAXPAYERS' RIGHTS IN ALL EVENTS.

WE HAVE BEEN QUICK TO SUPPORT CHANGES AND IMPROVEMENTS IN THESE SAFEGUARDS WHERE REAL IMPROVEMENT CAN BE ACHIEVED WITHOUT DOING VIOLENCE TO THE SYSTEM. FOR EXAMPLE, WE SUPPORTED CHANGES IN THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA) OF 1982 WHICH INCREASED CERTAIN EXEMPTIONS FROM LEVY, WHICH REQUIRED THE TIMELY RELEASE OF LIENS, AND WHICH REQUIRED NOTICE BEFORE LEVY. WE ARE JUST NOW GATHERING DATA ON THE EFFECTS THESE CHANGES ARE HAVING ON OUR OPERATIONS.

ADDITIONALLY, AS REQUESTED BY THE CONFERENCE REPORT ON TEFRA, IN JULY OF 1983 WE PROVIDED THE FINANCE COMMITTEE WITH A "REPORT ON PROCEDURAL SAFEGUARDS WITHIN THE INTERNAL REVENUE SERVICE ASSURING THAT TAXPAYERS ARE NOTIFIED OF THEIR RIGHTS".

EXISTING TAXPAYER SAFEGUARDS

TO ILLUSTRATE THE LEVELS OF TAXPAYER PROTECTION THAT CURRENTLY EXIST, LET ME BRIEFLY REVIEW SOME OF THE SAFEGUARDS NOW ADMINISTERED BY THE ASSISTANT COMMISSIONER (COLLECTION). I WILL FOCUS ON PROCEDURES RELATING TO LEVIES AND SEIZURES BECAUSE THESE TOOLS CAN HAVE THE MOST SUBSTANTIAL IMPACT ON THE DELINQUENT TAXPAYER AND ARE OF THE GREATEST INTEREST TO US TODAY SINCE THEY ARE DEALT WITH SO EXTENSIVELY IN YOUR BILL.

"LEVY" REFERS TO ATTACHMENT OF A TAXPAYER'S ASSETS IN THE POSSESSION OF THIRD PARTIES, SUCH AS BANK ACCOUNTS AND WAGES. "SEIZURE" REFERS TO THE ATTACHMENT OF A TAXPAYER'S ASSETS IN HIS OR HER OWN POSSESSION, SUCH AS AN AUTOMOBILE, BUSINESS EQUIPMENT, OR BUILDING.

THE SERVICE CAN LEVY OR SEIZE A DELINQUENT TAXPAYER'S PROPERTY IF ASSESSED TAXES ARE NOT PAID WITHIN 10 DAYS AFTER NOTICE AND DEMAND FOR PAYMENT. HOWEVER, OUR PROCEDURES ARE DESIGNED TO GIVE THE TAXPAYER EVERY REASONABLE OPPORTUNITY TO SETTLE THE TAX LIABILITY IN A REASONABLE AND AMICABLE WAY BEFORE THESE MORE DRASTIC ENFORCEMENT ACTIONS ARE STARTED. UNDER THESE PROCEDURES, OUR SERVICE CENTER SENDS FOUR NOTICES TO AN INDIVIDUAL TAXPAYER (THREE TO BUSINESSES) OVER A 3 TO 4 MONTH PERIOD. THESE NOTICES ARE SENT TO THE TAXPAYER'S LAST KNOWN ADDRESS AND IN ALL CASES THE LAST NOTICE IS SENT CERTIFIED

MAIL. ONLY AFTER THIS EXTENDED CORRESPONDENCE AND ONLY IN CASES WHERE WE HAVE HAD NO OTHER CONTACT WITH THE TAXPAYER, IS THE ACCOUNT SENT TO A DISTRICT OFFICE. FROM THESE, FURTHER ATTEMPTS ARE MADE TO CONTACT THE TAXPAYER. PUBLICATIONS EXPLAINING THE COLLECTION PROCESS AND THE TAXPAYER'S RIGHTS IN THAT PROCESS ARE AUTOMATICALLY MAILED TO THE TAXPAYER ALONG WITH THE SECOND TAX DELINQUENCY NOTICE. COPIES OF OUR PUBLICATIONS 586A, "THE COLLECTION PROCESS (INCOME TAX ACCOUNTS)", AND 594, "THE COLLECTION PROCESS (EMPLOYMENT TAX ACCOUNTS)" ARE ATTACHED TO THIS TESTIMONY. MR. CHAIRMAN, WE HEAR SO OFTEN THAT TAXPAYERS ARE NOT PROVIDED THIS KIND OF INFORMATION, SO I REQUEST THAT THEY BE MADE A PART OF THE RECORD. THUS, THE DETAILS INCLUDED IN THESE PUBLICATIONS WILL BE THERE FOR ALL TO SEE.

WE INFORM THE TAXPAYER BY REGISTERED MAIL IN THE FINAL NOTICE THAT IF PAYMENT IS NOT RECEIVED WITHIN 10 DAYS OR IF THE TAXPAYER DOES NOT CONTACT AN IRS OFFICE, ENFORCED COLLECTION ACTION -- LEVY OR SEIZURE -- MAY BE TAKEN. THIS NOTICE ALSO CONTAINS INFORMATION ABOUT THE TAXPAYER'S RIGHTS. SOME LEVY ACTIONS MAY BE TAKEN WITHOUT FURTHER CONTACT WITH TAXPAYERS. HOWEVER, PROCEDURES REQUIRE US TO ATTEMPT TO NOTIFY THE TAXPAYER IN PERSON THAT SEIZURE WILL BE THE NEXT ACTION TAKEN BY IRS.

WE HAVE ESTABLISHED MORE CONTROLS OVER THE USE OF SEIZURES THAN LEVIES. GENERALLY, WE DO NOT REQUIRE WRITTEN SUPERVISORY

APPROVAL ON THE MORE THAN 1 MILLION THIRD-PARTY LEVIES THAT ARE PROCESSED ANNUALLY. HOWEVER, BEFORE ANY SEIZURES ARE MADE WE REQUIRE WRITTEN APPROVAL BY AT LEAST A GROUP MANAGER. ON A RESIDENCE, THE NEXT HIGHER LEVEL OF MANAGEMENT APPROVAL IS REQUIRED. ALSO, ONCE SEIZURE ACTION IS INITIATED, THE CASES ARE CONTROLLED AND REVIEWED FOR PROCEDURAL COMPLIANCE BY A SPECIAL PROCEDURES STAFF WITHIN THE COLLECTION DIVISION. BEFORE OUR REVENUE OFFICERS CAN ENTER PRIVATE PREMISES, THEY MUST HAVE EITHER THE WRITEN PERMISSION OF THE TAXPAYER OR A WRIT OF ENTRY FROM A U.S. DISTRICT COURT.

IN ADDITION TO OUR EMPLOYEE MAKING THE SEIZURE, ANOTHER IRS EMPLOYEE OR A LAW ENFORCEMENT OFFICER MUST BE PRESENT WHEN A SEIZURE IS MADE. THIS PROVIDES A WITNESS TO THE PROPRIETY OF THE ACTION. FURTHER, THE TAXPAYER IS ASKED TO BE PRESENT WHEN THE SEIZED PROPERTY IS INVENTORIED.

IF I MAY DIGRESS A MINUTE, MR. CHAIRMAN, I WOULD LIKE TO POINT OUT ONE OF THE PUBLIC PERCEPTION PROBLEMS THAT WE HAVE IN THE COLLECTION AREA. MANY PEOPLE HAVE ARGUED THAT THE INTERNAL REVENUE SERVICE IS TOO TOUGH IN ITS COLLECTION PRACTICES. BUT THAT VIEWPOINT IS NOT UNIVERSAL. IN FACT, THE GENERAL ACCOUNTING OFFICE (GAO), IN A NOVEMBER 5, 1981, REPORT ENTITLED "WHAT IRS CAN DO TO COLLECT MORE DELINQUENT TAXES," FOUND THAT THE SERVICE HAS NOT ALWAYS TAKEN ENOUGH ACTION TO COLLECT DELINQUENT TAXES. IN REVIEWING COLLECTION ACTIONS TAKEN

AGAINST 1,500 TAXPAYERS IN FOUR DISTRICTS, GAO CONCLUDED THAT THE SERVICE WAS IN ESSENCE ALLOWING TAXPAYERS TO DELAY OR EVEN AVOID PAYING THEIR TAXES BECAUSE, AMONG OTHER THINGS, OF OUR CONCERN FOR TAXPAYERS' RIGHTS.

MY POINT IN MENTIONING THIS DILEMMA IS TO SHOW HOW THE SERVICE IS OFTEN IN THE MIDDLE ON SUCH ISSUES. WE ARE EITHER TOO HARSH OR TOO SOFT, DEPENDING ON WHO YOU LISTEN TO. WE HAVE BENT OVER BACKWARDS IN MANY CASES TO ASSIST TAXPAYERS IN MEETING THEIR OBLIGATIONS. FOR EXAMPLE, IN THE PAST WE FREQUENTLY ALLOWED FIRST-TIME DELINQUENTS TO ARRANGE INSTALLMENT PAYMENT AGREEMENTS. BUT, THIS KIND OF CONSIDERATION WAS ONE OF THE UNFAVORABLE POINTS NOTED BY GAO IN THEIR REPORT. WE ARE FORCED TO BALANCE THE NEED TO TRY AND COLLECT SOME $23 BILLION IN ACCOUNTS RECEIVABLE WITH THE NEED TO RESPECT THE RIGHTS OF THE INDIVIDUALS WHO ARE DELINQUENT. MR. CHAIRMAN, LET ME ASSURE YOU THAT OUR ENTIRE COLLECTION DIVISION WOULD BE DELIGHTED TO BE ABLE TO CLOSE OUR 3+ MILLION CASES A YEAR WITHOUT ANY DRASTIC ACTION. UNFORTUNATELY, IT IS NOT THAT SIMPLE. IT IS FAR FROM AN EASY JOB, BUT I ASSURE YOU WE DO OUR BEST.

THE PROBLEM RESOLUTION PROGRAM AND THE TAXPAYER OMBUDSMAN

THROUGH THE PROBLEM RESOLUTION PROGRAM AND THE CREATION OF THE OMBUDSMAN, THE IRS HAS ADDITIONAL PROCEDURES TO ASSIST TAXPAYERS IN CASES WHERE THE SYSTEM MALFUNCTIONS AND TO PROTECT TAXPAYERS' RIGHTS.

IN 1977, THE PROBLEM RESOLUTION PROGRAM (PRP) WAS ESTABLISHED NATIONWIDE TO PROVIDE SPECIAL ATTENTION TO TAXPAYERS' PROBLEMS AND COMPLAINTS. TODAY, EACH OF OUR 63 DISTRICT OFFICES AND OUR 10 SERVICE CENTERS HAS A PROBLEM RESOLUTION OFFICER.

IN 1979, THE POSITION OF TAXPAYER OMBUDSMAN WAS ESTABLISHED IN THE NATIONAL OFFICE. IT WAS, AND STILL IS, PART OF THE OFFICE OF THE COMMISSIONER, AND IS FILLED BY AN EXECUTIVE FROM OUR SENIOR EXECUTIVE SERVICE. THIS STATUS PROVIDES THE ORGANIZATIONAL AND OPERATIONAL KNOWLEDGE AND AUTHORITY NECESSARY TO FULFILL THE OMBUDSMANS' MISSION. ONE OF THE OMBUDSMANS' PRINCIPAL FUNCTIONS IS OVERSIGHT OF THE PRP PROGRAM.

OUR PROBLEM RESOLUTION PROGRAM PROVIDES SPECIAL ATTENTION FOR TAXPAYERS' PROBLEMS THAT ARE NOT PROPERLY OR PROMPTLY RESOLVED THROUGH NORMAL IRS CHANNELS. PRP IS INTENDED TO ASSURE THAT INDIVIDUAL TAXPAYERS HAVE SOMEWHERE TO TURN IF THE SYSTEM FAILS; SOMEONE WHO WILL MAKE SURE A PROBELM IS NOT LOST OR OVERLOOKED. THE COMPLAINTS CONCERN MISSING OR LATE REFUNDS, ERRONEOUS BILLINGS, UNCLEAR NOTICES AND LETTERS, AND EXAMINATION AND COLLECTION PROBLEMS.

ALL THE PRP CASES WE RECEIVE ARE GIVEN PERSONALIZED ATTENTION. EACH PROBLEM, WHEN RECEIVED BY PRP, IS DOCUMENTED

ON A SPECIAL FORM, GIVEN A CONTROL NUMBER, AND MONITORED UNTIL THE ISSUE IS RESOLVED. EVERY EFFORT IS MADE TO RESOLVE CASES AS EXPEDITIOUSLY AS POSSIBLE, AND OVER 75% ARE RESOLVED WITHIN 30 DAYS; MANY ARE RESOLVED MUCH FASTER. IF THE CASE CANNOT BE RESOLVED IN FIVE DAYS, THE TAXPAYER IS CONTACTED, ADVISED OF THE STATUS OF THE CASE, AND PROVIDED THE NAME AND TELEPHONE NUMBER OF THE EMPLOYEE RESPONSIBLE FOR RESOLUTION OF THE PROBLEM.

SAFEGUARDING IRS EMPLOYEES

MR. CHAIRMAN, I HAVE SPOKEN OF TAXPAYERS' RIGHTS AND OTHER WITNESSES WILL, I AM SURE, DO THE SAME. BUT LET ME TAKE A FEW MOMENTS TO TALK ABOUT THE RIGHTS OF OUR EMPLOYEES.

IN MAY OF 1983, I TESTIFIED BEFORE YOUR SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE OF THE JUDICIARY COMMITTEE IN SUPPORT OF TITLE XIII OF S. 829, THE COMPREHENSIVE CRIME CONTROL ACT OF 1983. IN THAT TESTIMONY, I POINTED OUT THE VARIOUS TYPES OF HARASSEMENT, ASSAULTS, THREATS, AND ATTACKS THAT OUR EMPLOYEES ENCOUNTER IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES. THE DATA IS STAGGERING. RATHER THAN REPEAT THE TESTIMONY HERE, I HAVE PROVIDED COPIES TO YOUR STAFF.

THE TYPES OF HARASSMENT BEING EXPERIENCED BY OUR EMPLOYEES RUN THE SPECTRUM FROM LATE-NIGHT PHONE CALLS TO PHYSICAL INTIMIDATION AND ASSAULTS. A BRIEF REVIEW OF SOME RECENT STATISTICS AND CASES IN THESE AREAS MAY BE INSTRUCTIVE.

DURING FY 1982, THERE WERE 513 INSTANCES WHERE IRS EMPLOYEES WERE EITHER PHYSICALLY ASSAULTED OR THREATENED WITH PHYSICAL ASSAULT. THIS WAS AN INCREASE OF 60 INSTANCES OVER THE FY 1981 LEVEL. OVER THE PAST SEVEN FISCAL YEARS, 3,647 CASES OF ASSAULTS AND THREATS HAVE BEEN INVESTIGATED BY REPRESENTATIVES OF OUR INTERNAL SECURITY DIVISION. IN OUR COLLECTION ACTIVITY ALONE, THERE WERE 688 ASSAULT, THREAT, AND HARASSMENT INCIDENTS DURING CALENDAR YEAR 1983, AN INCREASE OF 63% OVER THE PRIOR YEAR.

RECENTLY, A TAXPAYER ASSAULTED A MILWAUKEE IRS DISTRICT EMPLOYEE BY STRIKING HIM IN THE FACE AND THREATENING HIM WITH A SHOTGUN. THE EMPLOYEE TOOK REFUGE IN THE HOME OF A NEIGHBOR OF THE TAXPAYER. AGENTS OF THE MILWAUKEE DISTRICT ARRIVED AND ESCORTED THE EMPLOYEE FROM THE AREA. THE TAXPAYER WAS SENTENCED TO 2 YEARS IN PRISON (21 MONTHS SUSPENDED TO SERVICE 3 MONTHS IN JAIL), 2 YEARS PROBATION, AND HAD TO TURN HIS WEAPONS OVER TO THE COUNTY SHERIFF FOR 2 YEARS.

IN ANOTHER CASE, A TAXPAYER WAS ARRESTED BY MONTGOMERY COUNTY, MARYLAND, POLICE OFFICERS FOR SHOPLIFTING. DURING

QUESTIONING, THE TAXPAYER RELATED THAT HE HAD BEEN OFFERED A CONTRACT TO KILL AN IRS AGENT. THE MONTGOMERY COUNTY POLICE CONTACTED OUR INTERNAL SECURITY DIVISION. WHEN QUESTIONED BY DIVISION REPRESENTATIVES, THE TAXPAYER STATED THAT HE HAD BEEN OFFERED $5,000 AND A WEAPON BY ANOTHER TAXPAYER TO KILL THE AGENT IN WASHINGTON, DC.

LATER, THE TAXPAYER MADE A MONITORED TELEPHONE CALL TO THE OTHER TAXPAYER, WHO AGREED TO MEET HIM THAT AFTERNOON TO PROVIDE A WEAPON. DURING THE MEETING, WHICH WAS MONITORED BY IRS INSPECTORS, THE TAXPAYER PROVIDED A .38 SPECIAL SMITH AND WESSON, SIX ROUNDS OF AMMUNITION, THE IRS AGENT'S NAME AND ADDRESS CLIPPED FROM A TELEPHONE BOOK, AND THE DESCRIPTION AND LICENSE NUMBER OF HIS AUTOMOBILE. IMMEDIATELY FOLLOWING THE MEETING, THE OTHER TAXPAYER WAS ARRESTED. HE WAS EVENTUALLY SENTENCED TO 25 YEARS IN PRISON.

MY POINT IN REMINDING YOU OF THIS IS TO SHOW THAT SAFEGUARDS ARE A TWO-WAY STREET - THEY ARE NEEDED FOR BOTH CITIZENS AND GOVERNMENT EMPLOYEES ALIKE. DURING THIS PAST YEAR ALONE, WE'VE HAD AN EMPLOYEE SHOT AND KILLED, AND ANOTHER YOUNG FATHER OF 2 SHOT AT CLOSE RANGE 3 TIMES, AND ONLY THROUGH MODERN SURGERY IS HE ALIVE. A THIRD WAS TAKEN HOSTAGE IN HIS OWN OFFICE. THOSE WHO BILL THEMSELVES AS "PROTECTORS OF CITIZENS' RIGHTS" MUST ALSO SHOW EQUAL RESPECT FOR THE RIGHTS AND THE SAFETY OF OUR EMPLOYEES.

REVIEW OF S. 2400

AS I NOTED EARLIER, MR. CHAIRMAN, WE WILL PROVIDE A DETAILED ANALYSIS OF THE PROPOSED LEGISLATION.AS SOON AS POSSIBLE. IN THIS SUMMARY, I WILL DISCUSS SOME OF THE PRINCIPAL CONCERNS WE HAVE WITH THE BILL.

THE COLLECTION PROCESS

S. 2400 WOULD MAKE EXTENSIVE CHANGES IN THE CURRENT COLLECTION PROCESS. IN PARTICULAR, THE BILL WOULD DRAMATICALLY INCREASE THE AMOUNT OF WAGES AND PROPERTY EXEMPT FROM LEVY. FOR EXAMPLE, THE AMOUNT OF AN INDIVIDUAL'S TAKE-HOME PAY THAT WOULD BE EXEMPT WOULD RISE FROM $75 TO $200 PER WEEK. THE AMOUNT OF PERSONAL PROPERTY EXEMPT WOULD JUMP MORE THAN 1300% FROM $1500 TO $20,000. IMPORTANTLY, THESE INCREASES FOLLOW SUBSTANTIAL INCREASES ENACTED ONLY TWO YEARS AGO IN TEFRA. ON TOP OF THESE AMOUNTS, A DELINQUENT TAXPAYER COULD ALSO BE EXEMPT TO THE EXTENT OF A HOME, CAR, AND BUSINESS PROPERTY. LEVIES ON THESE ASSETS COULD ONLY BE MADE IN THE EVENT OF JEOPARDY OR THE PERSONAL APPROVAL OF A DISTRICT DIRECTOR.

THESE CHANGES WOULD VERY SERIOUSLY IMPAIR THE COLLECTION PROCESS. UNDER THE NEW RULES, THE MAJORITY OF TAXPAYERS WOULD SIMPLY BE EXEMPT FROM COLLECTION ACTIVITY FOR ANY UNPAID TAXES. IF THE CONGRESS BELIEVES THAT THESE PERSONS SHOULD BE

EXEMPT FROM TAXES, SUCH A DECISION SHOULD BE MADE DIRECTLY THROUGH THE TAX LAW RATHER THAN INDIRECTLY THROUGH A LIMITATION ON COLLECTION ACTIVITY.

FURTHER, THE BROAD EXPANSION OF EXEMPT PROPERTY WOULD INVITE ABUSE OF THE SYSTEM. IT IS SIMPLY UNACCEPTABLE TO ALLOW THE TAX PROTESTOR TO FUNNEL HIS OR HER ASSETS INTO A ROLLS-ROYCE OR PALATIAL RESIDENCE AND THEREBY EVADE TAX LIABILITY.

INSTALLMENT PAYMENT OF TAX

S. 2400 WOULD CREATE A NEW SECTION 6159 TO PROVIDE AUTHORITY TO ENTER INTO AN AGREEMENT TO PAY DELINQUENT AMOUNTS IN INSTALLMENTS. THE SERVICE WOULD BE REQUIRED TO OFFER SUCH AN AGREEMENT TO ANY TAXPAYER WITH A LIABILITY LESS THAN $20,000 WHO IS NOT DELINQUENT ON ANY OTHER INSTALLMENT AGREEMENT. THE MAKING OF SUCH AN AGREEMENT WOULD AUTOMATICALLY RELEASE A LEVY.

AS I MENTIONED EARLIER, IT IS THE SERVICE'S POLICY TO ENTER INTO INSTALLMENT AGREEMENTS WHEN SUCH AGREEMENTS ARE NECESSARY TO THE COLLECTION OF TAX. HOWEVER, THE MANDATORY EXTENSION OF AN INSTALLMENT AGREEMENT WOULD VERY DRAMATICALLY OFFSET CURRENT RECEIPTS. OF THE 1.6 MILLION DELINQUENT ACCOUNTS, ABOUT 98% ARE FOR AMOUNTS LESS THAN $20,000. IN EFFECT, A DELINQUENT TAXPAYER COULD OBTAIN A LOAN FROM THE

GOVERNMENT, WITHOUT ANY COLLATERAL, AT THE SECTION 6621 RATE, CURRENTLY 11%. MANY TAXPAYERS COULD WELL DECIDE THAT THE CURRENT PAYMENT OF TAXES IS NO LONGER EXPECTED UNDER THE LAW. THE COMPLIANCE AND REVENUE LOSS EFFECTS WOULD BE VERY SUBSTANTIAL.

ADVICE OF THE IRS

ON THE ISSUE OF ADVICE PROVIDED BY THE IRS, THE BILL WOULD ABATE ANY DEFICIENCY, INTEREST, AND PENALTY RESULTING FROM ERRONEOUS WRITTEN ADVICE FROM THE IRS. FURTHER, THE BILL WOULD REQUIRE THE SERVICE TO PREFACE ANY ORAL ADVICE WITH A WARNING THAT IT IS NOT BINDING ON THE GOVERNMENT.

DESPITE THE WELL-INTENTIONED THRUST OF THESE IDEAS, THE RESULT WOULD NEGATIVELY AFFECT THE BASIC TAXPAYER SERVICES THAT THE IRS WORKS TO PROVIDE. IF ALL WRITTEN ADVICE WERE TO BE BINDING, WRITTEN COMMUNICATIONS TO TAXPAYERS WOULD BE SEVERELY CURTAILED. ALL WRITTEN ADVICE WOULD HAVE TO BE PUT THROUGH AT LEAST THE LEVEL OF REVIEW NOW APPLICABLE TO PRIVATE LETTER RULINGS, WHICH OFTEN TAKES SEVERAL MONTHS TO COMPLETE; FURTHERMORE, THIS ESTIMATE DOES NOT TAKE INTO ACCOUNT THE INCREASED DEMAND ON THE SERVICE'S RESOURCES THAT WOULD BE INVOLVED.

ON THE QUESTION OF ORAL ADVICE, IF WE ARE REQUIRED TO STATE THAT SUCH ADVICE IS NOT BINDING, THE WHOLE TELEPHONE SERVICE SYSTEM COULD COLLAPSE. TAXPAYERS WOULD, OF COURSE, DEMAND WRITTEN ADVICE, AND THIS RESULT WOULD ONLY COMPOUND THE DRAIN ON OUR RESOURCES.

WE ARE CONSTANTLY WORKING TO UPGRADE THE QUALITY OF BOTH WRITTEN AND ORAL COMMUNICATIONS TO TAXPAYER. THESE EFFORTS ARE SUCCEEDING IN GETTING VITAL INFORMATION TO CITIZENS ON A COURTEOUS, RESPONSIVE, AND TIMELY BASIS. S. 2400 WOULD ENDANGER THIS WHOLE PROCESS.

TAXPAYER INTERVIEWS

THE BILL ALSO PROVIDES RULES FOR TAXPAYER INTERVIEWS. FOR EXAMPLE, THE INTERVIEW MUST BE CONDUCTED AT A REASONABLE TIME AND PLACE CONVENIENT TO THE TAXPAYER. IN ADDITION, SO-CALLED "MIRANDA" WARNINGS SIMILAR TO THOSE GIVEN TO CRIMINAL SUSPECTS WOULD BE REQUIRED PRIOR TO ANY INTERVIEW.

FIRST, A TIME AND PLACE REASONABLE AND CONVENIENT TO THE TAXPAYER MAY BE UNREASONABLE AND INCONVENIENT TO THE GOVERNMENT. IT IS UNACCEPTABLE TO SEND OUR EMPLOYEES INTO WHAT CAN BE A POTENTIALLY DANGEROUS SITUATION AT A TIME AND PLACE CHOSEN BY POSSIBLE TAX PROTESTORS. THIS ARRANGEMENT WOULD PROVIDE TAX PROTESTORS WITH A WHOLE NEW ARSENAL OF WEAPONS FOR HARRASSMENT AND DELAY. GIVEN THE DIFFICULTIES WE ALREADY

WORK UNDER IN SOME CASES, THIS WOULD EFFECTIVELY FRUSTRATE OUR COLLECTION PRACTICES.

SECOND, THE MIRANDA-STYLE WARNINGS ARE INCONSISTENT WITH MOST TAXPAYER INTERVIEWS. FOR THE MOST PART, THESE INTERVIEWS ARE FACT-FINDING CIVIL PROCEEDINGS. AN ADMONISHMENT BASED ON CRIMINAL INVESTIGATIONS IS INAPPROPRIATE AND UNNECESARILY FRIGHTENING TO THE TAXPAYER. I CAN WELL IMAGINE THE REACTION OF TAXPAYERS WHEN EACH TIME WE NEED INFORMATION, OUR STAFF MEMBER IS REQUIRED TO RECITE THESE WARNINGS.

CONCLUSION

MR. CHAIRMAN, I CANNOT EMPHASIZE TOO STRONGLY MY CONCERN ABOUT THIS BILL. IT WOULD SERIOUSLY IMPAIR THE SERVICE'S ENFORCEMENT CAPABILITIES -- TO THE POINT OF ENDING MUCH OF OUR COLLECTION ACTIVITY. AGAIN, WITHOUT THE PERCEPTION THAT OUR TAX LAWS ARE FAIRLY AND FIRMLY ENFORCED, THE WHOLE SELF-ASSESSMENT ETHIC IS ENDANGERED.

AS TAX ADMINISTRATORS, WE ARE ACCUSTOMED TO THE FACT THAT TAX COLLECTION IS PERHAPS THE LEAST FAVORITE FUNCTION OF GOVERNMENT -- A SITUATION THAT HAS PREVAILED SINCE BIBLICAL TIMES. HOWEVER, WE BELIEVE THAT TAX COLLECTION IS ALSO ONE OF THE MOST IMPORTANT FUNCTIONS OF GOVERNMENT. REVENUES MUST BE RAISED SOMEHOW, OTHERWISE ALL OTHER FUNCTIONS OF GOVERNMENT WOULD EVENTUALLY COME TO A HALT.

IN THE FINAL ANALYSIS, WHAT WE HAVE ATTEMPTED TO SAY HERE TODAY IS THAT THERE IS THE NEED FOR BALANCE: WEIGHING THE NEED TO SAFEGUARD TAXPAYERS' RIGHTS AGAINST THOSE SAME TAXPAYERS' RESPONSIBILITIES TO THEIR GOVERNMENT. WHEN THESE TWO FORCES ARE IN A ROUGH EQUILIBRIUM, TAX ADMINISTRATION IS SOUND. WHEN ONE OF THESE FORCES IS OUT OF BALANCE WITH THE OTHER, BOTH TAX ADMINISTRATION AND SOCIETY ARE ENDANGERED. IN ITS PRESENT FORM, S. 2400 TIPS THE SCALES FAR PAST THE POINT OF EQUILIBRIUM.

MY ASSOCIATES AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE, MR. CHAIRMAN.

Senator LEVIN. We appreciate very much your cooperation too in arranging the ground rules for today's hearing. As you know, I'm prevented by very strict rules of confidentiality from disclosing taxpayer information. As I understand the rules which you have provided, any witness who testifies on specific tax information must provide a waiver of confidentiality so that all of the facts can be made a matter of record. Thus, avoiding the possibility of bias in any of the examples.

Senator GRASSLEY. That's my understanding. Let me check to make sure that that is so.

Yes, that's accurate.

Senator LEVIN. All right. And I assume that we will receive the waiver in due course of the specific case that Senator Levin referred to so we can cure the record on that as well.

With me here at the witness table are Larry Westfall, the Assistant Commissioner of Collection; and George O'Hanlon who is the Taxpayer Ombudsman. We will all be available to answer any questions that you may have at the conclusion of this testimony.

Mr. Chairman, I must say that no agency in Government to my knowledge is more committed, nor more concerned, with the issue of taxpayers' rights than the Internal Revenue Service. The procedures and the safeguards we have in place are designed in great detail to assure fair treatment of taxpayers. The success of our self-assessment system is based largely on taxpayer cooperation and a willingness to work with the IRS in resolving problems of tax delinquency.

Nothing the IRS does is more difficult than keeping the system operating in a fair but firm way. Of our millions of taxpayer contacts every year, the overwhelming number are completed without incident. Others are very personal. A very few are confrontational in nature. These latter few are unfortunate and regrettable and there may be a few, human nature being what it is, that may be inevitable. We endeavor to take every step possible to avoid this and to safeguard taxpayers' rights in all events.

We have been quick to support changes and improvements in these safeguards where real improvement can be achieved without doing violence to the system. For example, we supported changes in the Tax Equity and Fiscal Responsibility Act which increased certain taxpayer exemptions from levy, and which required the timely release of liens and which required also notice before levy. We are just now gathering data on the effects of these changes on our operations.

Additionally, as requested by the conference report on TEFRA in July of 1983, we provided the Finance Committee with a report on procedural safeguards within the Internal Revenue Service assuring that taxpayers are notified of their rights.

To illustrate the levels of taxpayer protection that currently exists, let me briefly review some of the safeguards now administered by the Assistant Commissioner of Collection.

I will focus on procedures relating to levies and seizures, because these tools can have the most substantial impact on the delinquent taxpayer and are of the most interest to us since they are dealt with so extensively in your bill.

Levy refers to attachment of a taxpayer's assets in the possession of third parties, such as bank accounts and wages. Seizure refers to the attachment of a taxpayer's assets in his or her own possession, such as an automobile, business equipment or buildings.

The Service can levy or seize a delinquent taxpayer's property if assessed taxes are not paid within 10 days notice and demand for payment. However, our procedures are designed to give the taxpayer every reasonable opportunity to settle the tax liability in a reasonable and amicable way before these drastic enforcement actions are started.

Under these procedures, our Service center sends four notices to an individual taxpayer or three in the case of businesses over a 3- to 4-month period. These notices are sent to the taxpayer's last known address, and in all cases the last notice sent is sent certified mail. Only after this extended correspondence and only in cases where we have had no response and no other contact with the taxpayer is the account sent to a district office. From there, further attempts are made to contact the taxpayer. Publications explaining the collection process and the taxpayer's rights in that process are automatically mailed to the taxpayer along with the second tax delinquency notice. Copies of our publications, 586(a) of the collection process for income tax accounts, and 594 the collection process for employment tax accounts, are attached to this testimony, Mr. Chairman.

And so often we hear that taxpayers are not provided this kind of information, so I would like to request that these be made a part of the record. Thus, these publications will be there for all to see.

Senator GRASSLEY. They will be included at this time.

Commissioner EGGER. Thank you.

[The publications follow:]

36-068 O—84——4

Department of the Treasury
Internal Revenue Service

Publication 586A
(Revised April 1983)

The Collection Process (Income Tax Accounts)

Existe una versión de esta publicación en español, la Publicación 586S, que puede obtener en la oficina local del Servicio de Impuestos Internos.

Introduction

This pamphlet explains your rights and duties as a taxpayer owing a bill for taxes. It also explains the legal obligation of the Internal Revenue Service to collect overdue taxes, and how we fulfill this obligation. It is not intended as a precise and technical analysis of the law.

By law, the Internal Revenue Service is also empowered to collect certified child support obligations. The collection and payment of these liabilities, with certain exceptions, is the same as for unpaid taxes.

Liability for Unpaid Taxes

Notice and Demand. Each tax return filed with the Internal Revenue Service is checked for mathematical accuracy and to see whether appropriate payment has been made. If all tax has not been paid, we will send you a bill (including tax, interest and penalties), which is a *notice* of tax due and *demand* for payment. In most cases you are given 10 days from the date of the bill to pay before we will take enforced collection action. However, if we have reason to believe that delay will jeopardize collection, we may give notice and demand immediate payment; if immediate payment is not made, enforced collection action may be taken without regard to the 10-day period normally provided.

Payment Procedure

Tax Bill Contains Error. If you believe your bill contains an error, you should immediately reply in writing to the office from which the bill was sent. You should send copies of any records with your reply which would help in correcting the error. If you are correct, we will adjust your account and ask you to pay any tax, interest and penalty still due after the adjustment is made.

Unable to Make Full Payment. If you cannot pay your bill in full, write us immediately, explaining your circumstances. We may ask you to complete a Collection Information Statement so that we can review your financial condition to determine how you can pay the amount due.

If we can identify assets which could readily be sold, mortgaged or used to secure funds to pay the taxes, we will ask you to do so. Or we may ask you to secure a commercial loan if we determine that you are able to do so. If you neglect or refuse to pay in full, we may take enforced collection action.

Installment Payments. If we determine that you can pay the tax liability through installments, we will help you prepare a form itemizing your monthly income and expenses to ascertain the maximum amount you can pay each month. In certain cases we can arrange, through a payroll agreement, for your employer to withhold and regularly pay to us amounts deducted from your pay.

Once an installment agreement is made, you must make each payment on time. If payment cannot be made timely, notify us of the circumstances. You must also pay all future taxes as they become due.

During the time you are making payments, we may file a Notice of Federal Tax Lien to secure the Government's interest until the final payment is made. We may require you to give us current information regarding your financial condition to see if your payments can be increased. If you

fail to meet the terms of the agreement, we may take enforced collection action.

Delayed Collection. If we determine that you cannot make any payment towards your liability, we may temporarily delay collection until your financial condition improves. This does not mean your debt is forgiven or that the penalty for late payment and interest stop accruing. We may file a Notice of Federal Tax Lien to protect the Government's interest during this period.

Refund Offset. If you become entitled to a refund during the time you owe unpaid taxes, we will apply the refund to the unpaid tax liability and refund the balance, if any, to you.

Bankruptcy Proceedings. If you are a debtor in an ongoing bankruptcy, do not pay the bill without immediately contacting your local IRS office. While the bankruptcy proceeding will not necessarily relieve your obligation to pay, a temporary stay of collection may be in effect.

Enforced Collection Policy

Enforced collection action includes the filing of a Notice of Federal Tax Lien, the serving of a Notice of Levy and/or the seizure and sale of your property (personal and/or business). We normally take these actions only after we try to contact you and give you the opportunity to pay voluntarily.

Notice of Federal Lien. Once notice and demand for payment is sent and you neglect or refuse to pay the tax, a statutory lien attaches to your property and rights to property. This lien is not valid against the claims of certain of your creditors until a Notice of Federal Tax Lien is filed. The filing of a Notice of Federal Tax Lien is often necessary to protect the interest of the Government. It constitutes public notice to your creditors that a tax lien exists against your property, including property acquired after the Notice of Federal Tax Lien is filed.

Once a Notice of Federal Tax Lien is filed, it becomes a matter of public record and may adversely affect your business transactions or other financial interests.

A Federal Tax Lien will be released within 30 days after the tax due (including interest and other additions to the tax) has been fully satisfied by payment or adjustment or within 30 days after acceptance of a bond. All fees charged by the state or other jurisdiction for both filing and releasing a Notice of Federal Tax Lien will be added to the balance you owe.

Levy. A levy is the taking of property to satisfy a tax liability. Levy can be made on property in the hands of third parties (employers, banks, etc.), or in your possession (automobile, real property, etc.).

Once served, a levy on salary or wages continues in effect until your tax liability is satisfied or becomes unenforceable due to lapse of time.

Generally, court authorization is not required before levy action is taken unless collection personnel must enter into private premises to accomplish their levy action (actual seizure of property). There are three legal requirements before levy action can be taken:

1) the tax must be owed;
2) a notice and demand for payment must have been sent to your last known address; and,

3) if payment is not made, a notice of our intent to levy must be given to you at least ten days in advance. Such notice may be given to you in person, left at your dwelling or usual place of business, or sent by certified or registered mail to your last known address.

If collection is in jeopardy, the 10–day waiting period and the notice of intent to levy are not required.

Certain types of property are exempt from levy by Federal law. They are:

1) wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy.);
2) fuel, provisions, furniture and personal effects, not to exceed $1,500 in value (for the head of household);*
3) books and tools used in your trade, business or profession, not to exceed $1,000 in value;*
4) unemployment benefits;
5) undelivered mail;
6) certain annuity and pension payments;
7) workmen's compensation;
8) salary, wages or other income subject to a prior judgment for court-ordered child support payments;
9) deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees on permanent duty assigned outside the United States or its possessions.
10) a minimum exemption for wages, salary and other income of $75 per week, plus an additional $25 for each legal dependent.

If you disagree with the value placed on the property by the employee making the levy, you can request a valuation by three disinterested individuals.

Seizures and Sales. Any type of real or personal property you own or in which you have an interest (including residential and business property) may be seized and sold to satisfy your tax bill. After seizure, we give notice to you and the public about the proposed sale. Unless the property is perishable and must be sold immediately, we wait at least 10 days before the sale. Prior to sale, we compute a minimum price that we will accept for the property and advise you of the amount. If you are in disagreement, you may request a Service valuation engineer or a private appraiser to assist the Internal Revenue Service employee in recomputing the minimum price.

Before the date of sale, we may release the property to you if you pay an amount equal to the amount of the Government's interest in the property, you enter into an escrow arrangement, you furnish an acceptable bond or you make an acceptable agreement for payment of the tax.

You also have the right to redeem your property at any time prior to the sale. Redemption consists of paying the tax due, including interest and penalties, together with the expenses of the seizure.

After the sale, proceeds are applied first to the expenses of the levy and sale; the remaining amount is then applied against the tax bill. If the sale proceeds are less than the tax bill and expenses of levy and sale, you will still be liable for the remaining unpaid tax. When sale proceeds exceed the tax bill and expenses of levy and sale, we will hold the

surplus money pending a request for distribution. Unless a person, such as a mortgagee or other lienholder, submits a claim superior to yours, these excess funds will be credited or refunded to you upon request.

Real estate may be redeemed at any time within 180 days after the sale by paying the purchaser the amount he/she paid for the property plus interest of 20 percent per annum.

Claim Procedure For Refund or Credit

Once you have paid your tax bill in full, you have the right to file a claim for refund or credit if you feel the tax is erroneous or excessive. You can obtain the necessary forms and information about filing your claim by calling or visiting any Internal Revenue Service office. You should file your claim by mailing it to the Internal Revenue Service Center where the original return was filed. A separate form must be filed for each tax year involved. You should attach to the form a statement supporting your claim, including an explanation of each item of income, deduction or credit on which you are basing your claim.

You must file a claim for refund or credit within three years from the date the return was filed (returns filed before the due date are considered to have been filed on the due date) or within two years from the date the tax was paid, whichever date is later. For information on claiming a refund related to partnership items, see Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

Limit on Amount of Refund or Credit. Limits on amount of refund or credit is governed by the time period between the date you filed your tax return and the date you filed your claim. For claims filed within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of tax paid within that three year period. This would include amounts paid prior to the due date of the tax return (such as tax withheld from your wages and estimated tax payments) since these amounts are considered paid on the due date. If you do not file your claim within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of the tax paid within the two years immediately preceding the filing of your claim.

Your claim for refund or credit may be accepted as filed, or may be subject to examination. If your claim is examined, the procedures are the same as in the examination of a tax return. (Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund" is available at your local IRS office to explain our procedures for examining returns and claims.)

If we reject your claim, you will receive a statutory notice of disallowance. After receiving a notice of disallowance, you may file a suit for refund in a U.S. District Court or in the U.S. Claims Court. You must file suit within 2 years from the date the notice of disallowance is mailed to you. Also, if we have not acted on your claim within six months from the date you filed it, you can then file suit for refund. If you seek prompt court action without availing yourself of an IRS determination, a request in writing that the claim be immediately rejected must accompany your claim for refund. You can obtain information about procedures for filing suit in the District Court by contacting the Clerk of your District Court. You can obtain information about procedures for filing suit in the Claims Court from the Clerk of the Claims

Court, 717 Madison Place, N.W., Washington, D.C. 20005.

Taxpayer Rights

Representation. You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service.

Disclosure of information regarding your Federal tax matters may be made only to properly authorized persons. This authorization may be given on Form 2848, "Power of Attorney and Declaration of Representative," or Form 2848D, "Tax Information Authorization and Declaration of Representative;" or any other properly written power of attorney or authorization. Copies of these forms may be obtained from any Internal Revenue Service office.

Transfer of Your Tax Case. You have the right to request that your case be transferred to another district or to another office within a district. Generally, your request will be honored if you have a valid reason, such as a change of address before or during the resolution of your tax case.

Interest on Refunds. You are entitled to receive interest on any refund delayed more than 45 days after either the filing of your return or the due date of the return, whichever is later.

Receipts. You have the right to a receipt for any payment you make, including a receipt for all cash payments. You also have the right to receive copies of all contractual arrangements (such as an installment agreement) made with us.

Confidentiality of Tax Matters. You have the right to have your tax case kept confidential. The IRS has a duty under law to protect the confidentiality of your tax return information. However, if property is seized or if a Notice of Federal Tax Lien or lawsuit is filed, certain aspects of your tax case, such as the amount of tax due and type of tax owed, may become a matter of public record.

Penalty Adjustments—Reasonable Cause. The Internal Revenue Code provides for elimination of penalties for the late filing of a return or late payment of a tax if you can show reasonable cause.

Reasonable cause, broadly defined, is a cause which arises despite ordinary care and prudence exercised by you. You must submit a written statement setting forth the facts establishing reasonable cause. (Under the law, interest cannot be eliminated due to reasonable cause.) If our representative does not believe you have established reasonable cause, you may appeal this determination to the Regional Director of Appeals.

Offers In Compromise. By law you have the right to submit an offer in compromise on your tax bill. The Commissioner of the Internal Revenue Service has the authority to compromise all taxes (including any interest, penalty, additional amount or addition to tax) arising under the Internal Revenue laws, except those relating to alcohol, tobacco and firearms.

A compromise may be made on one or both of two grounds—(1) doubt as to the liability for the amount owed or (2) doubt as to your ability to make full payment of the

amount owed. The doubt as to the liability for the amount owed must be supported by evidence and the amount acceptable will depend upon the degree of doubt found in the particular case. In the case of inability to pay, the amount offered must exceed the total value of your equity in all your assets. The amount must also give sufficient consideration to your present and future earning capacity. If your offer is acceptable, we may require a written agreement to pay a percentage of future earnings as part of the offer. A written agreement may also be required to relinquish certain present or potential tax benefits.

Submission of an offer in compromise does not automatically suspend collection of an account. If there is any indication that the filing of the offer is solely for the purpose of delaying collection of the tax or that delay would negatively affect collection of the tax, we will continue collection efforts.

All forms necessary for filing an offer in compromise plus additional information regarding the procedure, can be obtained at local Internal Revenue Service offices.

Managerial Review of Employee Decisions. If at any step in the Collection process you do not agree with the recommendations of our employee, you have the right to discuss the matter with his/her manager. Our employees will tell you the name and location of their manager.

Entry upon Private Property. You have the right to refuse to permit Collection personnel to enter upon your private property when the purpose of the visit is to conduct a seizure of your assets. If you decide to avail yourself of this right, the IRS may then seek court authorization to enter upon the property to carry out the seizure action.

Problem Resolution Program (PRP). The PRP is designed for taxpayers who have been unable to achieve a resolution to their tax problems through the other avenues of review explained in this booklet. To use this service you should contact the Problem Resolution Officer on our toll free telephone system or visit him/her in the District office.

Privacy Act and Paperwork Reduction Act Notice

Under the Privacy Act of 1974 and the Paperwork Reduction Act of 1980, we must tell you:

- Our legal right to ask for the information and whether the law says you must give it.
- What major purposes we have in asking for it, and how it will be used.
- What could happen if we do not receive it.

The laws covers:

- Tax returns and any papers filed with them.
- Any questions we need to ask you so we can:

  Complete, correct, or process your return.
  Figure your tax.
  Collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers.

You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

If a return is not filed, or if we don't receive the information we ask for, the law provides that a penalty may be charged. And we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information.

If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

This is the only notice we must give you to explain the Privacy Act. However, we may give you other notices if we have to examine your return or collect any tax, interest, or penalties.

• U.S. G.P.O. 1983-361-142/ 4567

Department of the Treasury
Internal Revenue Service

Publication 594
(Rev. April 1983)

The Collection Process
(Employment Tax Accounts)

Introduction

This pamphlet explains your rights and duties as a taxpayer owing a bill for Employer's Quarterly Federal Taxes and how we fulfill the legal obligation of the Service to collect the taxes. It is not intended as a precise and technical analysis of the law.

Throughout this pamphlet, these taxes will be referred to as employment taxes.

Employment taxes represent the income tax and social security tax withheld from the wages of an employee plus the employer's share of social security taxes (FICA). The withheld portion of employment taxes is referred to as "trust fund taxes."

In collecting these taxes, we distinguish between those taxpayers who reflect a sincere effort to meet their tax obligations and those taxpayers who show little or no evidence of cooperation. The distinction is made because we believe that taxpayers who are making a true effort to comply should be afforded an opportunity to resolve their delinquency, over a short period of time, if they incur no further liabilities. On the other hand, we believe that "repeater" or "chronic delinquent" trust fund cases require swift and decisive Service response for the following reasons:

1) the taxpayer is using the "trust fund" monies as operating capital and thereby gains an unfair advantage over other businesses;
2) the taxpayer has been repeatedly warned and yet continues to divert the "trust fund" monies; and
3) the amount owed can escalate dramatically if the taxpayer ignores the federal tax deposit and/or filing requirements.

Liability for Unpaid Taxes

Notice and Demand. Each employment tax return filed with the Internal Revenue Service is checked for mathematical accuracy and to see whether appropriate payment has been made. If all the tax has not been paid, we will send you a bill (including tax, interest and penalties), which is a *notice* of tax due and *demand* for payment. In most cases you are given 10 days from the date of the bill to pay before we will take enforced collection action. However, if we have reason to believe that delay will jeopardize collection, we may give notice and demand immediate payment; if immediate payment is not made, enforced collection action may be taken without regard to the 10-day period normally provided.

Payment Procedures

Generally, you should pre-pay your taxes by using Federal Tax Deposits (FTD Form 501). Your deposits should be made directly to the Federal Reserve Bank in your area or to any authorized financial institution.

Each quarter you will receive a supply of preinscribed deposit forms. Be sure the forms show the proper identifying information:

- your name,
- employer's identification number,
- address,
- kind of tax and
- period covered.

If any of the preinscribed data are incorrect, follow the instructions on the reverse of the deposit form.

If you need more deposit forms, contact any IRS office. If you do not receive forms in time to make a deposit, mail your payment to the Internal Revenue Service Center where you file your return. Make sure that your payment shows the identifying information listed above.

For additional information about the proper procedure for using Federal Tax Deposits, obtain a copy of Circular E, "Employer's Tax Guide," or Notice 109, "Information About Depositing Employment and Excise Taxes," from any IRS office.

If you fail to pre-pay your tax and/or the return is filed without payment, the law provides for charging interest and penalties.

If you fail to pay over withheld taxes, we may require you to file and pay your taxes on a monthly rather than quarterly basis; or we may require you to open a special bank account and deposit the amounts required to be withheld within two banking days following payment of wages. Any employer who fails to open such an account and/or make timely deposits, after being required to do so, may be found guilty of a misdemeanor.

Accounts should be paid promptly to keep interest and penalty charges to a minimum and to avoid possible criminal prosecution for noncompliance. Whenever you make tax payments, be sure to enclose a copy of your bill and enter your employer identification number and tax period on your check, money order or postal note, to ensure that your payment is correctly credited to your account.

Tax Bill Contains Error. If you believe that your bill contains an error, you should immediately reply in writing to the office from which the bill was sent. You should send copies of any records with your reply which would help in correcting the error. If you are correct, we will adjust your account and ask you to pay any tax, interest and penalty still due after the adjustment is made.

Unable to Make Full Payment. If you cannot pay your bill in full, write us immediately, explaining your circumstances. We may ask you to complete a Collection Information Statement so that we can review your financial condition to determine how you can pay the amount due.

If we determine that you can pay all delinquent and current taxes in full, we will ask you to do so. If you neglect or refuse to pay in full, we may take enforced collection action.

If we determine that you cannot pay both your current and delinquent taxes, but will be able to if given a reasonable amount of time, we will permit you to pay the liability through installments. If a payment cannot be made timely, notify us of the circumstances. You must pay all future taxes as they become due.

During the time you are making payments, interest and penalty charges will accrue. We may file a Notice of Federal

Tax Lien to secure the Government's interest until the final payment is made. We may require you to give us current information regarding your financial condition to see if your payments can be increased. If you fail to meet the terms of the agreement, we may take enforced collection action.

If our financial analysis shows that you must use tax money to remain in business, no permanent cure for the delinquency could be gained through granting installment payments. Under these conditions, we must protect the interest of the Government. Enforcement measures deemed appropriate will be taken in these cases.

If your business is funded, in whole or in part, by the Small Business Administration (SBA) or a Small Business Investment Company (SBIC), you should also notify that organization of the delinquent taxes.

Refund Offset. If you become entitled to a refund on another tax return during the time you owe unpaid taxes, we will apply the refund to the unpaid tax liability and refund the balance, if any, to you.

Bankruptcy Proceedings. If you are a debtor in an ongoing bankruptcy, do not pay this bill without first immediately contacting your local IRS office. While the bankruptcy proceeding will not necessarily relieve you of your obligation to pay, a temporary stay of collection may be in effect.

Enforced Collection Policy

Enforced collection includes the filing of a Notice of Federal Tax Lien, the serving of a Notice of Levy and/or the seizure and sale of your property (personal and/or business). We normally take these actions only after we try to contact you and give you the opportunity to pay voluntarily.

Notice of Federal Tax Lien. Once notice and demand for payment is sent and you neglect or refuse to pay the tax, a statutory lien attaches to your property and rights to property. This lien is not valid against claims of certain of your creditors until a Notice of Federal Tax Lien has been filed. The filing of a Notice of Federal Tax Lien is often necessary to protect the interest of the Government. It constitutes public notice to your creditors that a tax lien exists against your property, including property acquired after the Notice of Federal Tax Lien is filed.

Once a Notice of Federal Tax Lien is filed, it becomes a matter of public record and may adversely affect your business transactions or other financial interests.

A Federal tax lien will be released within 30 days after the tax due (including interest and other additions to the tax) has been satisfied by payment or adjustment or within 30 days after acceptance of a bond. All fees charged by the state or other jurisdiction for both filing and releasing a Notice of Federal Tax Lien will be added to the balance you owe.

Levy. A levy is the taking of property to satisfy a tax liability. Levy can be made on either property in the hands of third parties, (accounts receivable, bank accounts, notes collectible, etc.), or in your possession (automobile, office equipment, real property, etc.).

Once served, a levy on salary or wages, continues in effect until your tax liability is satisfied or it becomes unenforceable due to lapse of time.

Generally, court authorization is not required before levy action is taken unless Collection personnel must enter into private premises to accomplish their levy action (actual seizure of property). There are three legal requirements before levy action can be taken:

1) the tax must be owed;
2) a notice and demand for payment must have been sent to your last known address; and,
3) if payment is not made, a notice of our intent to levy must be given to you at least ten days in advance. Such notice may be given to you in person, left at your dwelling or usual place of business, or sent by certified or registered mail to your last known address.

If collection is in jeopardy, the 10-day waiting period and the notice of intent to levy are not required.

Certain types of property are exempt from levy by Federal law. They are:

1) wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy);
2) fuel, provisions, furniture and personal effects, not to exceed $1,500 in value (for the head of household);
3) books and tools used in your trade, business or profession, not to exceed $1,000 in value;
4) unemployment benefits;
5) undelivered mail;
6) certain annuity and pension payments;
7) workman's compensation;
8) salary, wages or other income subject to a prior judgment for court-ordered child support payments;
9) deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees on permanent duty assigned outside the United States or its possessions;
10) a minimum exemption for wages, salary and other income of $75 per week, plus an additional $25 for each legal dependent.

If you disagree with the value placed on the property by the employee making the levy, you can request a valuation by three disinterested individuals.

Seizures and Sales. Any type of real or personal property you own or in which you have an interest (including residential and business property) may be seized and sold to satisfy your tax bill.

After seizure, we give notice to you and the public about the proposed sale. Unless the property is perishable and must be sold immediately, we wait at least 10 days before sale. Prior to sale, we compute a minimum price that we will accept at the sale and advise you of the amount. If you are in disagreement, you may request a Service valuation engineer or a private appraiser to assist the Internal Revenue Service employee in recomputing the minimum price.

Before the date of sale, we may release the property to you if you pay an amount equal to the amount of the Government's interest in the property, you enter into an escrow arrangement, you furnish an acceptable bond or you make an acceptable agreement for payment of the tax.

You also have the right to redeem your property at any time prior to the sale. Redemption consists of paying the tax due, including interest and penalties, together with the expenses of the seizure.

After the sale, proceeds are applied first to the expense of the levy and sale; the remaining amount is then applied against the tax bill.

If the sale proceeds are less than the tax bill and expenses of levy and sale, you will still be liable for the remaining unpaid tax. When sale proceeds exceed the tax bill and expenses of levy and sale, we will hold the surplus money pending a request for distribution. Unless a person,

such as a mortgagee or other lienholder, submits a claim superior to yours, these excess funds will be credited or refunded to you upon your request.

Real estate may be redeemed at any time within 180 days after the sale by paying the purchaser the amount he/she paid for the property plus interest of 20 percent per annum.

100 Percent Penalty. Any person required to collect, truthfully account for, and pay over withheld taxes who willfully fails to collect the tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade the payment of the tax, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

The term willful, means intentional, deliberate, voluntary or knowing as distinguished from accidental. Willfulness is meant to be the attitude of a person who, having a free will or choice, either intentionally disregards the law or is plainly indifferent to its requirements. The penalty can be asserted even though there may not have been any evil intent or desire to defraud the Government of such funds. For purposes of asserting the 100% penalty, a responsible person is defined as one who has the duty to direct the act of collecting, accounting for, and paying over withheld monies.

In the case of a corporation, when the person responsible for withholding, collecting and paying over taxes cannot otherwise be determined, the Service will look to the President, Secretary and Treasurer of the corporation as responsible officers.

If we recommend assertion of the 100% Penalty against you, you will be given the opportunity to contest the recommendation through a discussion with the employee's group manager. You may request a hearing before the Regional Director of Appeals if you disagree with the district's conclusions. However, once we assert the penalty, the Service can then take collection action against the individual assets of the responsible person(s).

In determining the amount of the 100% penalty, any payment made on the account involved is deemed to represent payment of the employer's share of social security and all assessed and accrued penalties and interest unless there was some specific designation to the contrary by the taxpayer at the time of payment. The taxpayer has no right of designation in the case of collections resulting from enforced collection measures. To the extent partial payments exceed the employer portion of the tax liability, they are considered as being applied against the withheld tax portion of the liability.

Claim Procedures For Refund or Credit. Once you have paid your tax bill or that portion of the bill which covers at least one employee for one quarterly period, you have the right to file a claim for refund or credit if you feel the tax is erroneous or excessive. You can obtain the necessary forms and information about filing your claim by calling or visiting any Internal Revenue Service office. You should file your claim by mailing it to the Internal Revenue Service Center where the original return was filed. (Claims on 100% penalties should be filed in the district where the penalty was paid.)

You must file a claim for refund or credit within three years from the date the return was filed (returns filed before the due date are considered to have been filed on the due date) or within two years from the date the tax was paid, whichever date is later. For information on claiming a refund related to partnership items, see Publication 556,"Examination of Returns, Appeal Rights, and Claims for Refund."

Limit on Amount of Refund or Credit. Limits on amounts of refund or credit are governed by the time period between the date you filed your tax return and the date you filed your claim. For claims filed within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of tax paid within that three year period. This would include amounts paid prior to the due date of the tax return (such as Federal Tax Deposits made before the return is due) since these amounts are considered paid on the due date. If you do not file your claim within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of the tax paid within the two years immediately preceding the filing of your claim.

Your claim for refund or credit may be accepted as filed, or may be subject to examination. If your claim is examined, the procedures are the same as in the examination of a tax return. (Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund," is available at your local IRS office to explain our procedures for examining returns and claims.)

If we reject your claim, you will receive a statutory notice of disallowance of your claim. After receiving a notice of disallowance you may file a suit for refund in a U.S. District Court or in the U.S. Claims Court. You must file suit within two years from the date the notice of disallowance is mailed to you.

If we have not acted on your claim within six months from the date you filed it, you can then file suit for refund. If you seek prompt court action without availing yourself of an IRS determination, a request in writing that the claim be immediately rejected must accompany your claim for refund. You can obtain information about procedures for filing suit in the District Court by contacting the Clerk of your District Court. You can obtain information about procedures for filing suit in the Claims Court from the Clerk of the Claims Court, 717 Madison Place, N.W. Washington, D.C. 20005.

Taxpayer Rights

Representation. You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service.

Disclosure of information regarding your Federal tax matters may be made only to properly authorized persons. This authorization may be given on Form 2848, "Power of Attorney and Declaration of Representative," or Form 2848D, "Tax Information Authorization and Declaration of Representative," (or any other properly written power of attorney or authorization). Copies of these forms may be obtained from any Internal Revenue Service office.

Transfer of Your Tax Case. You have the right to request that your case be transferred to another district or to another office within a district. Generally, your request will be honored if you have a valid reason, such as a change of address before or during the resolution of your tax case.

Refunds. You are entitled to receive interest on any refund delayed more than 45 days after either the filing of your return or the due date of the return, whichever is later.

Receipts. You have the right to a receipt for any payment you make on your account. You also have the right to re-

ceive copies of all contractual arrangements (such as an offer in compromise) which you make with us.

Confidentiality of Tax Matters. You have the right to have your tax case kept confidential. The IRS has a requirement under law to protect the confidentiality of your tax return information. However, if property is seized or if a Notice of Federal Tax Lien or lawsuit is filed, certain aspects of your tax case (such as the amount of tax due and the type of tax owed) may become a matter of public record.

Penalty Adjustments/Reasonable Cause. The Internal Revenue Code provides for elimination of penalties for the late filing of a return or late payment of a tax if you can show reasonable cause. Reasonable cause, broadly defined, is a cause which arises despite ordinary care and prudence exercised by you. You must submit a written statement setting forth the facts establishing reasonable cause. (Under the law interest cannot be eliminated due to reasonable cause.) If our representative does not believe you have established reasonable cause, you may appeal this determination to The Regional Director of Appeals.

Offers In Compromise. By law you have the right to submit an offer in compromise on your tax bill. The Commissioner of the Internal Revenue Service has the authority to compromise all taxes (including any interest, penalty, additional amount or addition to tax) arising under the Internal Revenue laws, except those relating to alcohol, tobacco, and firearms.

A compromise may be made on one or both of two grounds—(1) doubt as to the liability for the amount owed or (2) doubt as to your ability to make full payment of the amount owed. The doubt as to the liability for the amount owed must be supported by evidence and the amount acceptable will depend upon the degree of doubt found in the particular case. In the case of inability to pay, the amount offered must exceed the total value of your equity in all your assets. The amount offered must also give sufficient consideration to your present and future earning capacity. If your offer is acceptable, we may require a written agreement to pay a percentage of future earnings as part of the offer. A written agreement may also be required to relinquish certain present or potential tax benefits.

In the case of employment tax liabilities of an employer still in the same business as when the liability sought to be compromised was incurred, favorable consideration may not be given to the offer unless it is equal to the unpaid liability, exclusive of penalties and interest, and then only if the financial condition of the employer is such that no greater amount can be collected and current taxes are being paid.

Submission of an offer in compromise does not automatically suspend collection of an account. If there is any indication that the filing of the offer is solely for the purpose of delaying collection of the tax or that delay would negatively affect collection of the tax, we will continue collection efforts.

All forms necessary for filing an offer in compromise, plus additional information regarding the procedure, can be obtained at local Internal Revenue Service offices.

Managerial Review of Employee Decisions. If at any step in the collection process you do not agree with the recommendations of our employee, you have the right to discuss the matter with his/her manager. Our employees will tell you the name and location of their manager.

Entry Upon Private Property. You have the right to refuse permission for Collection personnel to enter upon your private property when the purpose of the visit is to conduct a seizure of your assets. If you decide to avail yourself of this right, the IRS may then seek court authorization to enter upon the property to carry out the seizure action.

Problem Resolution Program (PRP). The PRP is designed for taxpayers who have been unable to achieve a resolution to their tax problems through the other avenues of review explained in this booklet. To use this service you should contact the Problem Resolution Officer on our toll free telephone system or visit him/her in the District office.

Privacy Act and Paperwork Reduction Act Notice

Under the Privacy Act of 1974 and the Paperwork Reduction Act of 1980, we must tell you:

- Our legal right to ask for the information and whether the law says you must give it.
- What major purposes we have in asking for it, and how it will be used.
- What could happen if we do not receive it.

The laws covers:

- Tax returns and any papers filed with them.
- Any questions we need to ask you so we can:

Complete, correct, or process your return.
Figure your tax.
Collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers.

You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

If a return is not filed, or if we don't receive the information we ask for, the law provides that a penalty may be charged. And we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information.

If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

This is the only notice we must give you to explain the Privacy Act. However, we may give you other notices if we have to examine your return or collect any tax, interest, or penalties.

Commissioner EGGER. We inform the taxpayer by registered mail in the final notice that if payment is not received within 10 days or if the taxpayer does not contact an IRS office enforced collection action, levy or seizure, may be taken This notice also contains information about the taxpayer's rights.

Some levy actions may be taken without further contact with the taxpayers. However, procedures require that we attempt to notify the taxpayer in person that seizure will be the next action taken by IRS.

We have established more controls over the use of seizures than levies. Generally, we do not require written supervisory approval on the more than 1 million third party levies that are processed annually. However, before any seizures are made, we require written approval by at least a group manager. On a residence, the next higher level of management approval is required.

Also, once seizure action is initiated, the cases are contolled and reviewed for procedural compliance by a special procedures staff within the collection division. Before our revenue officers can enter private premises, they must have either the written permission of the taxpayer or a writ of entry from a U.S. district court.

In addition to the employee making the seizure, another IRS employee or a law enforcement officer must be present when a seizure is made. This provides a witness to the propriety of the action. Further, the taxpayer is asked to be present when the seized property is inventoried.

Let me digress just a moment, Mr. Chairman. I would like to point out one of the public perception problems that we have in the collection area. Many people have argued that the Internal Revenue Service is too tough in its collection practices. But that viewpoint is not universal. In fact, the General Accounting Office in a November 5, 1981, report entitled "What IRS Can Do To Collect More Delinquent Taxes," found that the Service has not always taken enough action to collect delinquent taxes.

In reviewing collection actions taken against 1,500 taxpayers in four districts, the GAO concluded that the Service was, in essence, allowing taxpayers to delay or even avoid paying their taxes because, among other things, of our concern for taxpayers' rights.

My point in mentioning this dilemma is to show how the Service is often in the middle on such issues. We are either too harsh or too soft, depending on who you listen to. We have bent over backwards in many cases to assist taxpayers in meeting their obligations. For example, in the past we have frequently allowed first time delinquents to arrange installment payment agreements. But this kind of consideration was one of the unfavorable points noted by GAO in their report.

We are forced to balance the need to try to collect some $23 billion in accounts receivable with the need to respect the rights of individuals who are delinquent.

Mr. Chairman, let me assure you that our entire collection division would be delighted to be able to close our 3-plus million cases a year without any drastic action. Unfortunately, it's not that simple. It is far from an easy job, but I assure you we do our best.

Through the Problem Resolution Program and the creation of the ombudsman, the Internal Revenue Service has additional pro-

cedures to assist taxpayers in cases where the system malfunctions and to protect taxpayers' rights.

In 1977, the Problem Resolution Program was established nationwide to provide special attention to taxpayers' problems and complaints. Today, each of our 63 district offices and our 10 Service centers has a problem resolution officer. In 1979, the position of taxpayer ombudsman was established in the national office. It was and still is part of the Office of the Commissioner, and is filled by an executive from our senior executive service. This status provides organizational and operational knowledge and authority necessary to fulfill the ombudsman's mission.

One of the ombudsman's principal functions is oversight of the problem resolution program. Our Problem Resolution Program provides special attention for taxpayers' problems that are not properly or promptly resolved through normal channels. The program is intended to assure that individual taxpayers have somewhere to turn if the system fails, someone who will make sure a problem is not lost or overlooked.

The complaints concern missing or late refunds, erroneous billings, unclear notices and letters, and examination and collection problems. All of the PRP cases we receive are given personalized attention. Each problem when received by the Problem Resolution Program is documented on a special form, given a control number, and monitored until the issue is resolved. Every effort is made to resolve cases as expeditiously as possible. And more than 75 percent are resolved within 30 days. Many are resolved much faster.

If the case cannot be resolved in 5 days, the taxpayer is contacted, advised of the status of the case, and provided the name and telephone number of the employee responsible for resolution of the problem.

Mr. Chairman, I have spoken of taxpayers' rights and other witnesses will, I am sure, do the same. But let me take a few moments to talk about the rights of our employees.

In May 1983, I testified before your subcommittee on administrative practice and procedure of the Judiciary Committee in support of title 13 of S. 829, the Comprehensive Crime Control Act of 1983. In that testimony I pointed out the various types of harassment, assaults, threats, and attacks that our employees encounter in the performance of their official duty. The data is staggering. Rather than repeat that testimony here, I have provided copies to your staff. The types of harassment being experienced by our employees run the spectrum from late night phone calls to physical intimidation and assault. A brief review of some recent statistics and cases may be instructive.

During fiscal 1982, there were 513 incidences where IRS employees were either physically assaulted or threatened with physical assault. This was an increase of 60 cases over the fiscal 1980 level. Over the past 7 fiscal years, 3,647 cases of assaults and threats have been investigated by representatives of our Internal Security Division. In our collection activity alone, there were 688 assault, threat, and harassment incidences during calendar year 1983, an increase of 63 percent over the prior year.

Recently, a taxpayer assaulted a Milwaukee district employee by striking him in the face and threatening him with a shotgun. The

employee took refuge in the home of a neighbor of the taxpayer. Agents from the Milwaukee district arrived and escorted the employee from the area. The taxpayer was sentenced to 2 years in prison and 2 years probation, and had to turn his weapons over to the county sheriff for 2 years.

In another case, a taxpayer was arrested by Montgomery County, MD, police officers for shoplifting. During questioning, the taxpayer related that he had been offered a contract to kill an IRS agent. Montgomery County policy contacted our Internal Security Division. When questioned by representatives, the taxpayer stated that he had been offered $5,000 and a weapon by another taxpayer to kill the agent in Washington, DC.

Later, the taxpayer made a monitored telephone call to the other taxpayer who agreed to meet him that afternoon and provide the weapon. During the meeting, which was monitored by IRS inspectors, the taxpayer provided a 38 caliber special Smith & Wesson, six rounds of ammunition, the IRS agent's name and address clipped from a telephone book, and the description and license number of his car.

Immediately following the meeting, the other taxpayer was arrested. He was eventually sentenced to 25 years in prison.

My point in reminding you of this is to show that safeguards are a two-way street. They are needed for both citizens and Government employees alike. During this past year alone we've had an employee shot and killed. Another young father of two was shot at close range three times and only through modern surgery is he alive. A third was taken hostage in his own office.

Those who bill themselves as protectors of citizens' rights must also show equal respect for the rights and the safety of our employees.

As I noted earlier, Mr. Chairman, we will provide a detailed analysis of the proposed legislation as soon as possible. And in this summary, I would like to discuss some of our principal concerns, however, that we have with this bill.

S. 2400 would make extensive changes in the current collection process. In particular, the bill would dramatically increase the amount of wages and property exempt from levy. For example, the amount of an individual's take-home pay that would be exempt would rise from $75 to $200 per week. The amount of personal property would jump more than 1,300 percent from $1,500 to $20,000.

Importantly, these increases follow substantial increases enacted only 2 years ago in TEFRA. On top of these amounts, a delinquent taxpayer could also be exempt to the extent of a home, a car, and business property. Levies on these assets could only be made in the event of jeopardy or the personal approval of a district director.

These changes would very seriously impair the collection process. Under the new rules, the majority of taxpayers will simply be exempt from collection activities for any unpaid taxes. If the Congress believes that these persons should be exempt from taxes, such a decision should be made directly through the tax law rather than indirectly through a limitation on our ability to collect.

Further, the broad expansion of exempt property would invite abuse of the system. It is simply unacceptable to allow the taxpay-

er to funnel his or her assets into a Rolls-Royce or a palatial residence and thereby evade tax liability.

S. 2400 would create a new section, 6159, to provide authority to enter into an agreement to pay delinquent amounts in installments. The Service would be required to offer such an agreement to any taxpayer with a liability of less than $20,000 who is not delinquent on any other installment agreement. The making of such an agreement would automatically release a levy. As I mentioned earlier, it is the Service's policy to enter into installment agreements when such agreements are necessary for the collection of tax. However, mandatory extension of an installment agreement would very dramatically offset current receipts.

Of the 1.6 million accounts, about 98 percent are for amounts less than $20,000. In effect, a delinquent taxpayer could obtain a loan from the Government without any collateral at the section 6621 rate, which currently is 11 percent. Many taxpayers could well decide that the current payment of taxes is no longer expected under the law. The compliance and revenue loss effects would be very substantial.

On the issue of advice provided by the IRS, the bill would abate any deficiency, interest and penalty resulting from erroneous written advice from the IRS. Further, the bill would require the Service to preface any oral advice with a warning that it is not binding on the Government.

Despite the well-intentioned thrust of these ideas, the result would negatively affect the basic taxpayer's services the IRS works to provide. If all written advice were to be binding written communications to taxpayers would be severely curtailed. All written advice would have to be put through at least the level of review now applicable to private letter rulings which often take several months to complete.

Furthermore, this estimate does not take into account the increased demand on the Service's resources that would be involved.

On the question of oral advice, if we are required to state that such advice is not binding, the whole telephone Service system could collapse. Taxpayers would, of course, demand written advice, and this result would only compound the drain on our resources. We are constantly working to upgrade the quality of both written and oral communications to taxpayers. These efforts are succeeding in getting vital information to citizens on a courteous, responsive, and timely basis. S. 2400 would, in my judgment, endanger this process.

The bill also provides rules for taxpayers' interviews. For example, the interview must be conducted at a reasonable time and place convenient to the taxpayer. In addition, so-called Miranda warnings similar to those given to criminal suspects would be required prior to any interview.

First, the time and the place reasonable and convenient to the taxpayer may be unreasonable and inconvenient to the Government. It is unacceptable to send our employees into what can be a potentially dangercus situation at a time and place chosen by a possible tax protestor.

This arrangement would provide tax protestors with a whole new arsenal of weapons for harassment and delay. Given the difficulties

we already work under in some cases, this would effectively frustrate our collection practices.

Second, the Miranda style warnings are inconsistent with most taxpayer interviews. For the most part, these interviews are fact-finding civil matters. And admonishment based on criminal investigations is inappropriate and unnecessarily frightening to the taxpayer. I can well imagine the reaction of taxpayers when each time we need information our staff member is required to recite these warnings.

Mr. Chairman, I cannot emphasize too strongly my concerns about this bill. It will seriously impair the Service's enforcement capabilities to the point of ending much of our collection activity. Again, without the perception that our tax laws are fairly and firmly enforced, the whole self-assessment ethic is in danger.

As tax administrators, we are accustomed to the fact that tax collection is perhaps the least favorite function in Government, a situation that has prevailed since Biblical times. However, we believe the tax collection is also one of the most important functions of Government. Revenue must be raised somehow. Otherwise, all other functions of Government would eventually come to a halt.

In the final analysis what we have attempted to say here today is that there is a need of balance. Weighing the need to safeguard taxpayers' rights against those same taxpayers' responsibilities to their Government. When these two forces are in rough equilibrium, tax administration is sound. When one of these forces is out of balance with the other, both tax administration and society are in danger.

In its present form, S. 2400 tips the scales, in our judgment, far past the point of equilibrium.

My associates and I would be pleased to answer any questions you have, Mr. Chairman.

Senator GRASSLEY. I have several questions. It would be all right for me to say that you have answered some of that in your testimony, but I want to ask the question to make sure that all of our ground has been covered.

Commissioner EGGER. Certainly.

Senator GRASSLEY. Obviously, from your last comment, you feel that S. 2400 would not enhance your work any. I would like to ask, then, whether or not you believe that there is a need for legislation such as I have introduced in S. 2400 in any aspect.

Commissioner EGGER. Quite frankly, Mr. Chairman, the changes which were made in TEFRA, which you sponsored basically, did go a long way to alleviating some of the problems. I think the notice before levy and the increase in the dollar amounts were very helpful. In fact, in terms of the dollar amounts when I first got in office I perceived immediately that those simply had not caught up with the inflation and all the other problems. So all of those changes were quite welcome changes. And we are happy to work with you on others.

But the principal provisions of S. 2400, in our judgment, go further than they need to go. We can go into some detail on each of these, if you would like.

Senator GRASSLEY. I would suggest maybe not at this point.

Commissioner EGGER. Yes.

Senator GRASSLEY. It may be that we would want dialogue more specifically.

Commissioner EGGER. We'd be quite happy to do that. We just think that right now while we are still trying to work under the TEFRA changes that this is probably not the time for legislation, although as I said before we are perfectly happy to work with you in specific areas.

Senator GRASSLEY. My next question is whether the route would be legislation or regulation. Is legislation required to make the changes contained in S. 2400? Or not having you say whether or not you would issue new regulations, but if so inclined, could new regulations be issued in place of enacting the legislation and accomplish the same end?

Commissioner EGGER. Yes. We can do a lot through regulation. And what we need to do is to make sure that the areas that need correction, we understand the full impact of that and then work toward that end.

Senator GRASSLEY. Do you know, though, if in every aspect of S. 2400 it could be done by regulation as opposed to legislation?

Commissioner EGGER. No, no. I don't think all of the things that are in S. 2400 could be done by regulation. No. Certainly some of that would require regulation.

Senator GRASSLEY. Are any other alternatives to protect taxpayers from perceived unfair levy and seizure laws available?

Commissioner EGGER. I'm not sure that by attempting to answer that—then I have to, I guess, agree that the procedures that are in place somehow——

Senator GRASSLEY. I used the word "perceived."

Commissioner EGGER. I think the thing that we need to do most is to educate taxpayers. Let me say that the publications which I offered for the record here, we have begun sending those to the taxpayers earlier for two reasons.

One is to see that the taxpayer is informed earlier and more fully at the outset in the case of possible delinquency. And the other is because so many taxpayers do in fact meet their obligation after the first or second notice, as a matter of taxpayer education, we like to be sure we get these things in the hands of as many taxpayers as we can.

These statements are very complete. And I believe they answer most of the questions when they come to the collection process.

Senator GRASSLEY. What, if any, effect will the passage of S. 2400 have on compliance with our tax laws?

Commissioner EGGER. We have not been able, of course, to quantify all of it. Our very, very quick look at the effects of the provisions there with regard to levy and seizure might very well, in effect, close down a good part or that activity. We have about 1 million or so levies a year. I know that Larry Westfall will correct me if I am wrong, but I think we are looking at the possibility of maybe $1 billion a year in deferred collections.

Senator GRASSLEY. Mr. Westfall, would you care to comment?

Mr. WESTFALL. The analysis that we have done of the impact of the legislation is that it would shut down a great deal of the current field activity, enforcement as it relates to both levy and seizure, and move a lot of the activity into the installment agreement

area. The impact of that in very general terms at this point is estimated to defer as much as $1 billion in revenue out of the current fiscal year.

Now by that what we are saying is that by not having the levy available, by not being able to use the seizure mechanism, and by moving those accounts into an installment agreement, we are delaying the amount of time that that revenue will take to come back into the Treasury. We are further extending the amount of the delinquent inventory in place at the present.

Senator GRASSLEY. On my next series of questions you have spoken to to some degree; particularly, the last part of it. The first part is would you describe the current IRS procedures used in levy and seizure cases—under what circumstances are these notices issued? But the last one, I think, is the most important. How much time elapses between notice and the actual seizure or levy?

Commissioner EGGER. Yes, I think it might be useful to go through that last part a little bit for you, Mr. Chairman.

Senator GRASSLEY. All right.

Commissioner EGGER. In the typical case, we get a tax return that shows a balance due but no remittance. Our procedure is to immediately send a notice to the taxpayer informing the taxpayer that they should remit within 10 days of the notice.

If that evokes no response, then in about 4 to 5 weeks the second notice goes out. Now we delay this one to try to accommodate the taxpayer's time for receipt of the notice and arranging for payment and so on so as not to have the payment and the second notice crossing in the mail as they do from time to time.

When the second notice has gone, that includes the copies of these publications, which I referred to. And they are very complete. They go through the entire collection process, and they also contain extensive statements in there regarding the taxpayer's rights, and what he or she may do in the event they disagree with the amount due and all that.

Then in another 4 to 5 weeks we send the third notice. And the third notice is naturally a little more strongly worded than the second notice. And, thereafter, about a month later if nothing has happened, we send the fourth notice. Now the fourth notice explains to the taxpayer that at this point we may levy on their property or seize the property under appropriate conditions. This is our notice of levy to the taxpayer.

We then have 10 days during which the taxpayer can do whatever he or she chooses to do. We invite them to contact any Internal Revenue office, of which there are more than 900 around the country, to try to get the matter resolved or at least begin the dialog.

If that doesn't happen, then we refer the case to the district where the return was filed or where the taxpayer resides. And it takes probably another 2 to 3 weeks for this whole process to go through, and before anything happens. Now it may well be that the next thing that would happen would be a levy on the individual's bank account, or levy on salary or wages, something of that type. But this would be typically a month or so after that fourth notice. So there is a period of 3, almost a minimum of 3, and some-

times as much as 4, 4½ months before anything happens from the time the taxpayer gets the first notice from us.

Senator GRASSLEY. All right. The next one deals with one part of the bill that you took very strong exception to. And that's the amount of wages exempt from levy. Under current law, of course, the family as $7,200 per year from wage levy exempt.

Commissioner EGGER. Right.

Senator GRASSLEY. In 1983, I would like to point out that the poverty level for a family of four was $10,180 per year. So I would like to have your view—if it would be possible to arrive at a figure which permits you to collect deficiencies without keeping taxpayers at subpoverty levels.

Commissioner EGGER. It's a little hard for us to see how that would happen because a taxpayer with two or three dependents at the $10,000 or $11,000 level is simply not going to have any tax liability. And so, therefore, absent a second wage or salary in the family such as both husband and wife working or income from other sources——

Senator GRASSLEY. Well, I was thinking, for instance, now with just coming out of a recession you could have people at very high wage and then unemployed. That would affect them, wouldn't it?

Commissioner EGGER. Right. But the dollar amount really does cure that because you would have to have a peculiar coincidence of the collection activity at the time the individual is unemployed. And the point is that all of our procedures are so crystal clear that if a taxpayer is unemployed and picks up the telephone and calls us and makes an arrangement, we enter into a deferred payment agreement or an installment agreement or something of that sort. What we are talking about is where the taxpayer has done nothing to cooperate with us, and waited until the levy falls.

And we just don't think that that happens in those cases to push the taxpayer into subpoverty levels.

Senator GRASSLEY. If you can give me a very specific response, we would kind of like to know what the average amount of the taxpayer's liability is where levy procedures are used.

Comissioner EGGER. We have about 96 or 97 percent of our delinquent accounts. These are the active delinquent accounts. They are less than $5,000. So that in the case of the vast majority of these procedures, it would be under that amount. We don't break down the collections that is the case closings, by whether we do it by levy or seizure. But pretty clearly they are in the minority of cases.

Now I'm going to ask Larry Westfall if he will add to that, if he has anything to add

Mr. WESTFALL. The average dollar amount in the system is between $3,000 and $4,000. As the Commissioner indicated, we have no specific statistics that cite the average amount of an account that is subjected to levy. But it should be, in general terms, the same. And so the answer is under five, more specifically in the range of $3,500.

Commissioner EGGER. I might mention, too, Mr. Chairman, that so often what happens is once we file a notice of levy with the taxpayer's bank or with his or her employer, the taxpayer then comes in for the first time in most cases, to sit down and work out an arrangement with us. A very large percentage of those instances are

worked out outside the levy process. And we withdraw the levy after we enter into an installment agreement or some other deferred payment arrangement.

Senator GRASSLEY. Within your Department or agency is there any procedure to review levy and seizure complaints? And then also have complaints increased materially in recent years or recent times? And whether or not they fall into any certain categories, these complaints?

Commissioner EGGER. Within the Collection Division, as I explained in my testimony, we do have a kind of quality control. That is, the case review, which is a post review group in the collection division. But as to complaints about the process or about individuals or things of that kind, that is handled in the problem resolution program. Mr. George O'Hanlon, who is the ombudsman for the Internal Revenue Service, is here. And, George, I would like for you to comment on the way cases are handled within the PRP.

Mr. O'HANLON. Mr. Chairman, the problem resolution program receives complaints on various Service activities. And we resolve them on a case by case basis. We do not accumulate any cumulative statistics that would give me information about the number of complaints we have had about levy or seizure.

During fiscal 1983, the problem resolution program resolved over 306,000 problems. A little over 18,000 were categorized as collection issues. That is as narrow as I can get. That's about 5.9 percent of the total problems that were resolved in the program involved collection issues. The number of problems that have come into the program have steadily increased since the program was instituted in 1977. In the past several years, a great deal of the increase is due by the awareness of all employees identifying situations that needed the assistance of the problem resolution program in the local offices.

I would like to mention about the pamphlet that is given to the taxpayers on the second notice. In there, the taxpayer's rights are spelled out. There is one section that pertains to the taxpayer—if the taxpayer is not in agreement or does not like the activities of the employee, that the taxpayer is to contact the employee's manager, and the employee is to give the name and location of his or her manager.

Commissioner EGGER. Let me read that to you, Mr. Chairman. It says—and it has got a bold faced type heading—"Managerial Review of Employee Decisions." If at any step in the collection process you do not agree with the recommendations of our employee, you have the right to discuss the matter with his or her manager. Our employees will tell you the name and the location of their manager." And this is sent to everybody on the second notice. That's just one of the provisions.

Mr. O'HANLON. That concludes the remarks I had on that.

Senator GRASSLEY. As you know, many of the provisions of S. 2400 restate current policy that is already in the revenue agent's manual. Is there any sort of requirement that agents keep up on, the changes in the manual? Like, for instance, having refresher courses or any sort of inservice training along that line?

Commissioner EGGER. Absolutely. Every year. And throughout the year. Our staff people are required to go through continuing

education courses. And those courses focus very heavily on the new and additional things that have taken place. And any change in the manual that's of significance would be included in the course materials and maybe a particular point of them, the CP courses.

Senator GRASSLEY. We've had taxpayers complain that the IRS can abrogate installment agreements at will. Are there any standards for breaking an installment agreement?

Commissioner EGGER. The only standard that we have for amending an agreement would be where the taxpayer's financial circumstances improve materially, in which case if that comes to our attention, naturally, we would expect the taxpayer to maybe speed up or pay in full the obligation.

Senator GRASSLEY. Well, is that the only instance that it can be done?

Commissioner EGGER. If there is a thought that the taxpayer is about to flee the country or secrete the assets or something of that sort. The only other time an installment agreement is revoked is when the taxpayer fails to live up to the conditions in the agreement. That is to say, they fail to make the payments or they fail to otherwise live up to the agreement. In the case of some of our employee tax agreements, we invariably require that they keep their current liabilities up to date. And sometimes they meet the payment of the installment obligation but then fail to meet the current obligations, which, of course, puts us right back where we started from. So the failure to meet the conditions in the agreement is the principal reason why those agreements are terminated.

Senator GRASSLEY. Is there any reason to change it other than his improved economic condition? I could understand if you had reason to think a person was going to leave the country, try to get out of it totally. But except for that.

Commissioner EGGER. No, no. I see no reason. If we enter into an agreement with the taxpayer and the circumstances remain essentially unchanged—that is, his fortunes—and he meets his installment obligations and the other conditions in the agreement, why would we? It's a good agreement, and we enter into it.

About 25 percent of our cases in inventory are installment agreements.

Senator GRASSLEY. That's what I was going to ask you next. Twenty-five percent.

Commissioner EGGER. About 25 percent. Right.

Senator GRASSLEY. Is there any reason IRS personnel should not be permitted to give their names to taxpayers who call on the telephone seeking taxpayer assistance?

Commissioner EGGER. The problem is that we have a lot of what we call temporary or employed individuals who serve during this filing season in our taxpayer service. That is, the toll free telephone system. And if a taxpayer calls up and gets an answer from a particular individual and gets the name of that individual and then calls back 6 months later because something has happened, that individual may no longer be working with the Service and so on. I don't think there is any need to secrete it. What we are looking at in our whole review of the correspondence with taxpayers—we are insisting that whenever and wherever name and address of

the individual who can do something about his or her account. And so that they have somebody to contact.

I have no concern about giving the name of the person with whom they talked, but I think it might serve to confuse.

Senator GRASSLEY. Would it have anything to do with the quality of response if a person realizes that in getting a response they may not be held accountable?

Commissioner EGGER. I will put it this way. The institution would be responsible if the law were such that oral advice has to be correct in every case. But what we do is monitor the phone conversations with taxpayers in our taxpayers' service program for the purpose of quality control. In other words, we want to find out whether or not the taxpayer is being given accurate advice. Our statistics show over a period of several years that the error rate is down around 3 percent, which I think is quite low. And almost every year somebody in the media calls around and makes two or three phone calls and asks the same question and gets different answers. And so they make quite a point of it.

Last year somebody did that and found that the error rate that they got in the private sector was a little bit higher than it was in calling the Internal Revenue Service. We do everything we can to make that quality as good as possible. Keep in mind that every time somebody gives erroneous advice to a taxpayer it creates another problem for us down the road. And we certainly try to avoid that.

Senator GRASSLEY. Has that 3-percent figure been fairly constant over several years?

Commissioner EGGER. It has come down a little bit, but it doesn't move a great deal.

Senator GRASSLEY. If it's possible to quantify additional costs that would be involved with the passage of S. 2400, I would appreciate it.

Commissioner EGGER. We can quantify our costs. In point of fact, they might be a little bit less under your bill but that would be because we have less to do, I think. I think the real problem is in the lost revenue. We will try to give you as much as we can on that.

Senator GRASSLEY. Of course, we would have a responsibility to look at that as well.

Commissioner EGGER. Certainly.

Senator GRASSLEY. I mean I would at least assume that responsibility for myself.

Under current law, oral advice is not binding on the IRS. And, of course, many honest taxpayers do not understand that the IRS 'answers to questions on your 800 number might not be definitive. Is there any reason not to notify the taxpayer that an oral request should be reduced to writing for greater certainty? And, of course, I know you commented on that in your testimony because you thought that present written answers take a good deal of time and you see it just expanding that time.

Commissioner EGGER. Yes. Even in our letter ruling program where in effect the taxpayer is protected, if he gets a ruling letter from us, we would not revoke that ruling letter as to that taxpayer where the taxpayer has relied on the ruling to his detriment. That's a firm rule, and has been in place for a good long while.

But it doesn't protect other taxpayers. Now the reason is that those rulings, those private letter rulings, do not go through as much review as a published ruling does. And when we issue a published ruling, then everybody has a right to rely on the published rule.

So if we have to go to a written advice which is to be relied on by the taxpayer and where no tax liability could arise as a result of that—that is no different tax liability—then I think we would have to put all that communication through a very rigorous review process in order to make sure that as in the case of these letter rulings we don't have a lot of statements out there which do not represent the position of the Service.

Keep in mind we have probably 28,000 people in the examination division overall, and probably another 13,000 or 14,000 in collection. So that we are in the range of 40,000 to 45,000 people having constant contact with the Internal Revenue Service. And to suggest that somehow or other everything that each of those people tells the taxpayer is always 100 percent accurate is just not realistic.

Senator GRASSLEY. That falls within that 3 percent error rate.

Commissioner EGGER. Well, the 3-percent error rate, I'm speaking of now, is the taxpayers' Service telephone.

Senator GRASSLEY. All right.

Commissioner EGGER. I would expect our——

Senator GRASSLEY. Do you have a statistic on the error rate on the latter point you were making?

Commissioner EGGER. No, because those people act very much under the direction of their group supervisors and so on, and we don't have any way of monitoring the conversations that they might have with a taxpayer on a daily basis.

Senator GRASSLEY. The last point was on the written responses.

Commissioner EGGER. The last point was on our written response. I guess the problem I see with it is first of all if you inform the taxpayer what I am going to tell you you can't rely on, right away they want to say, well, how can I get information I can rely on. And then you tell them, well, you can send in a request in writing and we will respond to you.

When that happens, the good part of the telephone service, we think, will disappear rapidly because people naturally prefer to get it in writing. And then when they write to us and they can't get their answer for 6 or 7 months, then they are going to be more frustrated.

I think we have to look at how can we provide the best service for the most taxpayers in this country. And I think what we are trying to do is say, well, sure, occasionally we are going to make a mistake, but that doesn't mean that the whole system should be tossed out just because we make a few errors here and there.

Senator GRASSLEY. The extent to which a taxpayer is audited, and at the audit he said, well, I made a phone call; this is what they told me. To what extent does a person have to document that he made that telephone call?

Commissioner EGGER. Well, quite frankly, it wouldn't matter whether he documented it or not because that wouldn't necessarily make any difference. If the return treatment is incorrect, it would be corrected anyway.

Senator GRASSLEY. That's true. But the extent to which he might have a higher penalty than otherwise.

Commissioner EGGER. An ameliorating circumstance, I don't—there is no way that I know of that he can document it. Like I said, we might look into the question of having people give names and then we can look back and see if we did have a person in such and such a place.

But keep in mind that a lot of these phone calls—we only have a few call sites around the country. For example, we may have a group in Boston who will be answering phone calls all over the northeastern part of the United States. So it would be extremely difficult for us to try to deal with that sort of a problem; particularly, on examination which would be 1 year or 2 years later.

If the position was one that could have been reasonable, I can't imagine that we would be unwilling to abate penalties where it is merely a question of that sort.

We are trying very hard to see to it that taxpayers are not penalized where there is a good faith effort to work within the system and stay with it.

Senator GRASSLEY. Well, you have been very kind during a long period of questioning. I appreciate it very much. And I assume that we will still have to stay in dialog on some of these points.

Commissioner EGGER. I certainly fully expect to do that. Let me say this, Mr. Chairman. That although we have heard a lot of criticism, and I expect we will continue to always hear it because people dislike parting with their money, but I have not yet run across cases where the taxpayer was severely injured. We have made every effort to make redress. Legally, we are not permitted, of course, to pay their tax for them and that kind of thing. But so often taxpayers tell you or tell us only part of the story. And then when we look into it and see what the real circumstances are, it turns out not to be.

Quite honestly, in the 3 years that I have been in that office I have yet to see a case where there was anything other than perhaps an understandable error in judgment or people get emotional or get carried away and do something that they shouldn't have. That's human nature. It is going to happen. But to the very best of our ability we are going to see to it that the taxpayers are treated respectfully and that their circumstances are given every consideration.

Senator GRASSLEY. Thank you very much, Commissioner Egger, and to your colleagues as well.

The next organization we hear from is the National Taxpayers Union, and from Mr. David Keating. He was been with the National Taxpayers Union since 1978. Currently he serves as its executive vice president. He has extensively studied local, State and Federal tax structures, and has been the advisor to several State initiative petition campaigns to reduce and limit taxes. His areas of specialty include constitutional tax limitation and balance budget amendments. And he has appeared before this subcommittee and other committees I have been on.

I want to thank you for your cooperation now and acknowledge that you have been very cooperative in the past.

STATEMENT OF DAVID KEATING, EXECUTIVE VICE PRESIDENT, NATIONAL TAXPAYERS UNION, WASHINGTON, DC

Mr. KEATING. Thank you, Mr. Chairman. I would like to thank you for the opportunity to present testimony today on S. 2400, the Taxpayers' Procedural Safeguard Act.

The National Taxpayers Union, representing 130,000 taxpayers across the country, has long been concerned with the tax burden, and taxpayers' rights. I would like to say at the beginning of my statement that we strongly support your bill, and commend you for your concern while you have served in the Congress with addressing taxpayers' burdens and rights.

Appearing with me this afternoon is Jack Warren Wade, Jr. He's an adviser to the National Taxpayers Union, and we are submitting a joint written statement for the record. Mr. Wade will have some oral comments at the conclusion of mine.

Senator GRASSLEY. Mr. Wade, we can take your testimony after his. And I see on our witness list that there is somebody in between you. Does that create any problems for Mr. Herbert?

Mr. HERBERT. That's fine.

Senator GRASSLEY. Proceed.

Mr. KEATING. We think it is important for the Internal Revenue Service to maintain respect for the Federal Government's administration of the tax laws. Although we have testified before the Finance Committee on several occasions on the need for fundamental reform and further reduction of tax rates, much more can be done to more efficiently and fairly administer the tax system.

The IRS has awesome powers, unrivaled by other Government agencies. We think S. 2400 restores some much needed balance to the tax collection system.

I would like to briefly address each provision in S. 2400, and briefly explain the reasons why we think they are worthwhile.

The first substantive section, section 2, says a number of important things. IRS' notices of intent to seize would have to inform taxpayers of appeal procedures, possible alternative collection remedies provided for by the tax code, and procedures on seizure and sale and of property.

In 1978 the GAO reported that 25 percent of the taxpayers they interviewed were not aware of the IRS' seizure authority. And 57 percent were not told that seizure was the next action to be taken. Although Commissioner Egger did outline a number of steps, it's still clear that the IRS notices are not enough to notify taxpayers of their rights under the code for redemption or release of property at the actual time of seizure. Even though information may have been sent with the second notice, we think it would be wise to also require that the IRS also notify taxpayers at the actual time of seizure.

We believe that section 2 should also change the 10-day notice and demand period to 30 days. A 10 day period is insufficent time for a taxpayer to come up with the financial resources or funds to pay the tax. We think 30 days is reasonable both for the taxpayer and the IRS.

Another part of section 2 would require the IRS to release a levy when the taxpayer enters into an installment arrangement, and re-

moves the condition that the installment arrangement must facilitate collection of the tax.

Presently a taxpayer who has a financial hardship but he has experienced IRS levy of his property is not entitled to a release of the levy.

Section 2 also raises the levy exemption amounts for personal effects, tools of the trade, and wages. We think the right of an individual to be self-supporting does need to be recognized in the tax code. Even though the TEFRA changes did make adjustments, the exemption amounts are still not at the level that they were in 1954, if you adjust those exemption amounts to inflation since then.

Section 2 would also restrict the IRS from seizing taxpayers' property when it is apparent prior to seizure that the Government's estimated interest in the property would not meet the expenses incurred in seizing and selling the property. As Senator Levin noted earlier during the hearing, this would prevent the IRS from making purely harassive seizures. Ending harassment will help in maintaining respect for the IRS as it goes about its actions.

Section 3 makes, I think, a reasonable and needed change in expanding the judicial review of jeopardy assessments to also include jeopardy levies. It gives a taxpayer 90 days to make a judicial appeal rather than the current 30, which I think is far too restrictive and unreasonably short. It may be difficult for someone to even find a lawyer, within that 30-day period, who is competent to handle such an appeal, much less begin to press the case. A 90-day period, I think, would be fairer to both the IRS and taxpayers in that situation.

We have addressed, on previous occasions, the changes mentioned in section 4 regarding awarding of court costs and certain fees. We would be willing to see how the current TEFRA standards work out. But as we have indicated, we think the standard for the burden of proof should be on the Government to show that it was acting reasonably rather than requiring taxpayers to prove the IRS was acting unreasonably in order to qualify for fee awards.

Section 5, I think, is one of the most important sections in S. 2400. It clearly authorizes the Secretary to enter into installment agreements if that will help collect taxes. More importantly, it would also require that any individual income taxpayer who has not been delinquent in the prior 3 years will automatically qualify for an installment agreement. I can hardly think of any provision that would make tax collection administration more fair and reasonable.

It also requires installment agreements to be binding on the IRS. This would be made a part of the Tax Code. The taxpayer would be on firm legal ground if the IRS did try to act unreasonably in this nature. If the taxpayer does not comply with the terms of the agreement, of course, the IRS reserves the right to cancel the agreement. But the fact is many hearings have shown the IRS has revoked installment arrangements, sometimes without notification, as Senator Levin noted earlier.

Such revocations usually occur when the taxpayer's case has either been transferred to a new revenue officer or a new managment official. We think it is simply fair for the agreement to be binding on both the taxpayer and the IRS.

It does provide for an exception for when a taxpayer's financial circumstances change by allowing for a hearing to review the financial situation of the taxpayer after giving 30 days notice to the taxpayer. I think that provision would allow sufficient flexibility for the IRS to boost up the terms of the installment arrangement if the taxpayer, say, wins the jackpot in his State lottery.

Section 6 talks about written advice and oral advice. Commissioner Egger didn't go into too much detail about that, but I think that if you were to take a poll of taxpayers I would venture to say that 95 percent or more are unaware of what private letter rulings are, much less who to write to and how to get one.

The fact is there is a double standard for taxpayers. If you are fairly wealthy, if you have access to a good tax attorney, it's not terribly difficult to get binding advice. If you are not, it's difficult to get advice from the IRS that you can rely on. And even when you get IRS advice, taxpayers are often not aware of the possible pitfalls.

I think the bill makes a reasonable requirement that the IRS inform taxpayers that oral advice may not be binding. This doesn't mean that the IRS would have to tell the taxpayer everytime it answers the phone. This requirement could be met by simply placing information in the basic 1040 instructions, posting signs at taxpayer service offices. This information should note that the IRS is doing its best to inform you with its oral advice, however, that advice cannot be guaranteed. Such warnings are necessary. It's simply the truth. Taxpayers should know that the advice may be faulty; particularly, early in the year when the IRS has all those temporaries working.

Senator GRASSLEY. What would you say——

Mr. KEATING. I would say it probably fluctuates during the year. I would say it is probably highest during the first quarter when they bring in temporaries. I really have no reason to quarrel with that number. If that's the case, that's something that they could put in their notices. They could say that our surveys have found our advice to be accurate in 95 to 97 percent of the cases. However, you should realize that it is not binding, and you should take that into consideration. It is a standard caution that is used in the private sector for advice that is given. In many cases it may not be guaranteed, but it is thought to be the best advice possible, with the purchase of that particular publication. The taxpayer should know that one is not purchasing the best quality of advice by getting it free over the phone. Overall, I still think that is a reasonable arrangement.

Section 8 provides for a beefed up Office of the Ombudsman. One of the changes would be that the ombudsman would be a political appointee, not a career IRS employee. I think a political appointee would attract people who would be more likely to be true taxpayer advocates without worrying about career aspirations within the IRS or about how other IRS managers feel about his input or her input into their areas of responsibility.

I think we might come up with more creative suggestions from people who do not have their career on the line, so to speak, by becoming an ombudsman.

The ombudsman would have the authority to administer an administrative appeals procedure that would review either pre-levy or post-levy petitions to insure that the IRS has complied with the law. Although the ombudsman presently administers the Problem Resolution Program, the office has no power to intervene in any enforcement activity in any formal matter.

The bill would give the ombudsman authority to intervene for 90 days, which should be plenty of time to clear up the circumstances at issue and resolve the problem.

The next section, section 9, would give the taxpayer an alternative of going to a U.S. district court if he or she did not find the ombudsman ruling properly. That would be simply another check.

The ombudsman would also have the power to establish procedures to review and evaluate taxpayer complaints on a formal basis, keep statistics on complaints, and serve as a safeguard to ensure the taxpayers' rights. The ombudsman would also submit an annual report to the congressional tax-writing committees, which I think could prove very useful in monitoring complaints about IRS activities.

The ombudsman would also recommend legislative changes, if any are necessary.

Finally, section 10 reforms the procedures for setting a minimum bid price for sale of seized property. These reforms would simply change it so that the taxpayer's equity in a property would always be preserved.

Mr. Chairman, I would again like to thank you very much for the opportunity to appear this afternoon. We hope the subcommittee and the full Congress will act to approve your proposed bill or some sections of the bill. We would be happy to assist you and other members of the committee and staff on this important set of reforms.

[The prepared statement of Mr. Keating follows:]

NATIONAL TAXPAYERS UNION

A NONPARTISAN, NONPROFIT ORGANIZATION DEDICATED TO THE PUBLIC INTEREST

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Statement of
David L. Keating
Executive Vice President
National Taxpayers Union

before the

Subcommittee on Oversight of the Internal Revenue Service
Committee on Finance
U.S. Senate

on the proposed

Taxpayers Procedural Safeguard Act

March 19, 1984

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to present testimony on S. 2400, the Taxpayers' Procedural Safeguard Act. The National Taxpayers Union, representing 130,000 taxpayers nationwide, has long been concerned with the tax burden and taxpayers' rights.

We strongly support S. 2400, and commend the chairman for his concern and diligence in addressing taxpayers' burdens and rights.

Appearing with me is Jack W. Wade, Jr., an advisor to the National Taxpayers Union. He worked as a Revenue Officer for the Internal Revenue Service for eight years and wrote more than twelve IRS manuals on tax collection and enforcement. He is author of the book, When You Owe The IRS, published last year by Macmillan Publishing Company.

Even with the 1981 Economic Recovery Tax Act tax rate reductions, tax rates remain at near record high levels. The most recent poll by the Advisory Commission on Intergovernmental Relations found that the federal income tax is now thought to be the "worst tax -- that is, the least fair." A poll conducted for USA Today found taxpayers to be almost evenly split when responding to the question "Do you think you're treated fairly by the federal income tax system?" The poll also found that 53% of those questioned agreed with the statement that "tougher enforcement of tax laws would not significantly cut down on cheating."

It's important for the Internal Revenue Service to maintain respect for the federal government's administration of the tax laws. Although the tax laws need fundamental reform and tax rates need to be further reduced, much more can be done to fairly and efficiently administer the tax system.

General Accounting Office reports, congressional hearings, and private sector survey efforts all indicate that improvements can and should be made to safeguard taxpayers rights.

I will now briefly summarize each substantive section of S. 2400 and briefly address the need for each provision in the bill.

SECTION 2 — Levy and Seizure Safeguards

Section 2(a) -- IRS notices of intent to seize would have to inform taxpayers of appeal procedures, possible alternative collection remedies, and the tax code provisions and procedures on seizure and sale of property. The notice would have to be delivered at least 10 days, but not more than 30 days, before seizure. In 1978 the GAO reported that 25% of the taxpayers they interviewed were not aware of IRS's seizure authority and 57% were not told that seizure was the next action to be taken. While IRS's computer notices do inform taxpayers of this right to seize, the notices are not clear enough in conveying IRS's intent to seize and when seizure will occur.

The IRS would also be required to notify taxpayers of their rights under the code allowing for a redemption or release of property at the time of seizure. IRS employees are not required by any code provision, regulation, or any manual direction to notify the taxpayer of these rights. These changes are needed to prevent any misunderstanding about the taxpayer's right for return of his property after seizure.

This section should also change the ten day notice and demand period to 30 days. At present, the IRS is only required to wait ten days after mailing a notice and demand of an existing tax liability before any seizure action is allowed. Ten days is insufficient time for a taxpayer to either respond or obtain sufficient funds to pay the tax. Thirty days is a more reasonable period.

Section 2(b) -- The effect of a levy made upon a taxpayer's salary or wages is continuous until the liability is either paid or becomes unenforce-

able. IRS regulations provide that a levy may be released when it will facilitate collection of the tax and "the delinquent taxpayer makes satisfactory arrangements to pay the account of the liability in installments." But the Code makes no provision for the right of taxpayers to enter into an installment agreement, nor does it provide for the release of a levy for conditions other than full payment (IRC 6337), or when it will "facilitate collection of the liability" (IRC 6343). There are times when an installment agreement should be considered as preferential over the seizure and sale of property, even when the installment agreement does not necessarily facilitate collection of the liability. (The regulations do not define what it means to "facilitate collection.")

Section 2(b) also requires the IRS to release a levy when the taxpayer enters into an installment arrangement, and thereby removes the condition that the installment arrangement must facilitate collection. It also requires that the levy be released when the tax liability is satisfied or if the IRS has determined that the tax is not currently collectible due to financial hardship of the taxpayer.

Presently, a taxpayer who has a financial hardship, but who has experienced an IRS levy of his property is not entitled to a release of the levy by either the Code, IRS regulations, or IRS policy.

Section 2(c)(1) raises the levy exemption amounts to $20,000, a level sufficient to protect a taxpayer's household furniture and personal effects. It also applies the levy exemptions to all taxpayers. The Code presently only allows personal property exemptions to "heads of a family."

Section 2(c)(2) also raises the exemptions for books, tools, equipment and property for a trade business or profession to $10,000, to better reflect the essentials needed for an individual to be able to support himself. Except for

a small change made in TEFRA, the exemptions from levy have not changed since adoption of the 1954 code. Even now, though, the amounts of exemption provide little protection for taxpayers since they do not reflect the substantial increases in the cost of living since 1954. The bankruptcy laws provide taxpayers better protection than the Tax Code.

The right of an individual to be self-supporting needs to be recognized in the levy provisions of the Tax Code.

Section 2(c)(3) raises the exempted weekly amounts from levy upon a taxpayer's wages, salary, or other income to $200 from $75 for himself, and to $50 from $25 for each dependent or spouse. Current exemptions are too low. Few, if any, taxpayers could possibly maintain themselves or their families under such a levy. Congress intended to reform the levy provision of the Code by making continuous the levy upon wages, salary, and other income and by allowing the weekly exemption amounts from levy. But these provisions, which first originated in the Tax Reform Act of 1976, are actually more restrictive and burdensome to taxpayers than the previous levy provisions which did not allow minimum exemptions and which were not continuous.

Section 2(c)(3)(B) clarifies the Code by applying the weekly exemptions to the wages, salary, or other income subsequently deposited into a financial institution. IRS regulations clearly ignore the meaning of the words "received by" when specifying the minimum exemptions from levy for wages, salary and other incomes "payable to or <u>received by</u> an individual" as specified in the Code. The effect of this is to grant certain weekly exemptions to a taxpayer on his wages, salaries, or other income before it has been paid to the taxpayer, but to deny the taxpayer these same exemptions <u>after</u> his wages, salary, or other income, has been paid and deposited into a financial institution. The Tax Reform Act of 1976 appears to apply these minimum weekly

exemptions from levy to wages, salaries, and other income already received by a taxpayer.

Section 2(c)(4) says that levy or seizure action on a taxpayer's residence, his primary source of transportation, or his business assets could only be authorized by IRS district management. An exception is made when the collection of tax is in jeopardy. The levy power of the IRS is a far-reaching authority. Next to criminal enforcement, distraint action is the most sweeping action that adversely affects taxpayers. It should not be just the decision of a collection employee and his immediate supervisor, but should represent an agency decision. Requiring approval at the District Director level will ensure that these types of seizures are warranted.

Section 2(d) -- The IRS would be restricted from seizing any taxpayers property when it is apparent prior to seizure that the government's estimated minimum bid price for the property would not meet the expenses incurred in seizing and selling the property. This would prevent the IRS from making purely "harrasive" seizures.

The IRS would also be restricted from seizing a taxpayer's property on the same day the taxpayer is responding to a summons issued by the IRS. This would prevent, for example, the IRS from seizing a taxpayer's car in the IRS parking lot while the taxpayer is responding to the IRS summons.

Section 2(e) entitles taxpayers to a release of levy under certain conditions. This section would require the IRS to release a levy when: the tax liability has been satisfied; the release of the levy will facilitate the collection of the liability; the taxpayer has entered into an installment agreement; the taxpayer can substantiate grounds for financial hardship; the expenses of levy and sale of such property exceed the amount of such liability, and the value of the property exceeds such liability and the release of

the levy on a part of such property could be made without burdening the collection of such liability. The provision does not restrict the IRS from making a subsequent levy on the property released under this provision.

IRS regulations currently specify certain conditions that are considered to "facilitate collection of the liability" before a release of levy can be made without full payment by the taxpayer. IRS policy imposes another condition not stated in the regulations or the Code that says "subsequent full payment must be provided for." The imposition of current IRS policy in these situations constitutes such an unreasonable burden and requirement on taxpayers as to deny them their Fourth Amendment right against unreasonable searches and seizures.

SECTION 3 — Review of Jeopardy Levy or Assessment Procedures

Section 3 expands the judicial review of jeopardy assessments to also include jeopardy levys. It gives the taxpayer 90 days to make a judicial appeal, rather than the current 30, which is far too restrictive and unreasonably short.

The Tax Reform Act of 1976 provided for judicial review of jeopardy assessments. But there is no judicial review of a jeopardy levy made without regard to the 10 day notice and demand period required by section 6331(a). Under IRS policy, as provided in the Internal Revenue Manual section 5213.4, revenue officers may request that immediate assessments be made on voluntarily filed tax returns, and that they may enforce collection without regard to the 10-day notice and demand period when certain conditions exist. These conditions are so vague that they could be applied to almost every taxpayer who can't pay in full at the time he files his return. A jeopardy levy made by the IRS could actually hinder the taxpayer's efforts to raise enough money to fully pay the liability, and could cause the taxpayer to suffer needless financial damage

and losses. The jeopardy levy should be used judiciously and the IRS should be held accountable to the courts for their exercise of this power.

SECTION 4 — Awarding Court Costs and Certain Fees

Section 4 changes the standard for award of attorney's fees and court costs to automatically award litigation costs unless the position of the U.S. was substantially justified. The current standard requires the taxpayer to prove the IRS was unreasonable. This allows the IRS to take far too many untenable positions with taxpayers, knowing that most taxpayers are more likely to accede to IRS's demands rather than incur major expenses in litigation.

SECTION 5 — Installment Agreements to be Binding

Section 5(a) authorizes the secretary to enter into a written installment agreement with a taxpayer if such an agreement will facilitate collection of the tax.

Section 5(b) -- Any individual income taxpayer who owes the IRS less than $20,000 and who has not been delinquent in the prior three years, would be entitled to pay his tax liability in installments consistent with his ability to pay.

Section 5(c) requires installment agreements to be binding on the IRS. It allows the IRS to disallow an installment agreement if the taxpayer failed to provide adequate and accurate information. It also provides for procedures to revise an installment agreement if a taxpayer's financial circumstances change.

There is sufficient evidence to indicate that the IRS has a double standard regarding the terms of the installment agreement. If a taxpayer does not comply with all the terms of the agreement, the IRS reserves the right to

cancel the agreement and levy the taxpayer's property without further notifying the taxpayer.

But the IRS has been known to revoke installment agreements, sometimes without notification to the taxpayer, even when the taxpayer has been in compliance with all the terms of the installment agreement. Such revocations usually occur when the taxpayer's case has either been transferred to a new Revenue Officer, or a new management official has reviewed the case and arbitrarily revoked the agreement. If the IRS considers the installment agreement a contractural arrangement to be upheld by taxpayers, then taxpayers should also have the right to expect the IRS to uphold its end of the contractual obligation.

Sufficient evidence exists to prove that Revenue Officers frequently revoke installment agreements with nothing more substantial than an alleged belief or knowledge that the taxpayer's financial condition has changed, or improved. For this reason, taxpayers who have entered into installment agreements need Code protection from arbitrary and capricious use of IRS's powers. Section 5(c) allows the IRS to review a taxpayer's financial situation during the course of the installment agreement, but requires that taxpayers be given proper notification and that a hearing be held on such financial review. Thirty days for responding are provided and should be sufficient.

SECTION 6 — Written Advice Given By Officers and Employees of the IRS to be Binding

Section 6(a) requires that any information, advice, or interpretation given in writing to a taxpayer by an officer or employee of the IRS acting in his official capacity be binding.

It makes a logical and reasonable exception to this requirement when the taxpayer fails to provide adequate and accurate information.

IRS Policy Statement P-(11)-88 states that "Taxpayers will assume that they can rely on the accuracy of all official publications." Written information and advice should be reliable and binding.

Section 6(b) requires the IRS make provisions for notifying the public that any oral information, advice, or interpretation given by an IRS employee may not be binding. This notification could occur by posting signs in IRS offices and printing caveats in IRS publications.

SECTION 7 — Procedures Involving Taxpayer Interviews

Section 7(a) requires that IRS audits be conducted at a time and place that is as convenient to the taxpayer as it is to the IRS. For the most part, taxpayers usually conform their schedules for the convenience of the IRS, but IRS auditors should be just as willing to hold an audit at a time and place beneficial and convenient to the taxpayer.

It also allows taxpayers to record an audit interview. Even though the IRS now allows recorded interviews, this right is so important as to be safeguarded by law.

Section 7(b) requires that the IRS advise the taxpayer of his rights to have a representative accompany him during the interview, that he has the right not to disclose any information or evidence that he believes would violate his 5th Amendment rights against self-incrimination, and that he has the right to consult an attorney at any time during the interview. Although the IRS audit is a civil matter, it is also a procedure that could lead to a criminal investigation. Even though it may seem that informing every taxpayer of these rights before an audit interview could unnecessarily alarm them, the language could be constructed in a non-threatening manner while being informative and beneficial to the taxpayer's constitutional rights against self-incrimination.

SECTION 8 — Presidential Appointment of a Taxpayer Ombudsman

Section 8 provides that the IRS Ombudsman be a political appointee, not a career IRS employee. As a political appointee, the Ombudsman would be free to be a true taxpayer advocate without worry for his career aspirations, or about how other IRS managers feel about his input into their areas of responsibility. A political appointee would come to the job independent of the restrictive mission-oriented mentality that besets so many IRS career executives. Not being ingrained with IRS philosophy and methods of operation, he should be more understanding of the needs of individual taxpayers and more receptive to changing the old ways of doing things.

The Ombudsman would have authority to administer an administrative appeals procedure that would review either pre-levy or post-levy petitions to ensure that the IRS has complied with the law. The Ombudsman presently administers the Problem Resolution Program, but has no power to intervene in any enforcement proceeding or activity in a formal manner.

Upon review the Ombudsman would be able to intervene for 90 days to either prevent a levy, or to release a levy. Since this appeals procedure would be restricted to specified circumstances, there is very little chance of taxpayers using this procedure to unduly forestall collection of the tax. On the contrary, the taxpayers who are experiencing unreasonable IRS actions would be entitled to an administrative appeals procedure that would protect them from enforcement actions which are designed more for harrassment than for collecting the tax.

The Ombudsman would establish procedures to review and evaluate taxpayer complaints. The Ombudsman would also survey taxpayers to obtain an evaluation of the quality of the service provided by the IRS and the Ombudsman. With the IRS continually changing its procedures and tax forms, the Ombudsman can serve

as a safeguard to ensure that taxpayers rights are being respected and that taxpayers are not unnecessarily paying too much in tax.

The Ombudsman would compile data on the number and type of taxpayer complaints in each area of the country, and the response to such complaints. The Ombudsman would submit an annual report to the congressional tax writing committees along with any recommended legislation.

SECTION 9 — Civil Action For Violation of Procedures

Section 9 provides another avenue of appeal for the situations outlined in Section 8 to a U.S. District Court should the Office of Ombudsman fail the taxpayer's request.

SECTION 10 — Minimum Price

Section 10 reforms the procedures for setting a minimum bid price for sale seized property. When real or personal property has been seized by the IRS, a minimum bid price must be established before the property can be offered for sale. A minimum bid price is the lowest bid the IRS will accept at a sale of the seized property. This prevents seized property from selling for substantially less than the forced sale value of the property.

The IRS has designed a formula for computing the minimum bid price, but IRS policy requires that after using the formula, the minimum bid price must not exceed the tax, penalty, interest, and all other charges on the account. For instance, if the taxpayer owes the IRS $50,000 and the minimum bid formula indicates an otherwise minimum bid of $75,000, the IRS will restrict the minimum bid to the $50,000 amount the taxpayer owes the IRS. In this example, the IRS could sell the taxpayer's property for $50,000, resulting in a substantial loss to the taxpayer of $25,000. But if in this case the taxpayer owed $75,000 or more the minimum bid formula would be used without restriction and the property would be sold for not less than $75,000, thereby preserving

the taxpayer's equity in the property. This practice noted by the GAO in their report of July, 1978 entitled "IRS Seizure of Taxpayer Property: Effective, But Not Uniformly Applied." The GAO also said that the IRS was applying the provisions of 31 USC 195 even though those provisions did not apply to IRS seizures and sales.

Mr. Chairman, we hope the Subcommittee and the U.S. Congress will promptly approve your proposed bill. We will be happy to assist you, other members of the Subcommittee, and staff, on this important set of reforms.

Senator GRASSLEY. In the past we have relied upon your expertise in this area, and we would expect to continue to do that. As one person on the outside who is very active and particularly as you work with Mr. Jack Wade, our next witness, I would like knowledge for the record that you have likewise been very helpful to us, appearing before this committee on past occasions. And I would like to have the record show that you were an employee of the IRS, serving as a revenue officer from 1971 to 1975, I am told. And from 1975 to 1979 you served as the IRS course developer in charge of the entire nationwide revenue officers training program. And currently you are the author of two books.

Please proceed.

STATEMENT OF JACK W. WADE, JR., ADVISER, NATIONAL TAXPAYERS UNION, WASHINGTON, DC

Mr. WADE. First, Mr. Chairman, I would like to thank you for holding these hearings on taxpayers' safeguards. As a result of last May's hearings, several of us have been working with your staff to formulate our ideas. And we believe that the Taxpayers 'Procedural Safeguard Act is a major advancement in protecting taxpayers from the arbitrary and capricious use of IRS enforcement powers.

This bill has several entirely new provisions that have never been proposed before, and several variations of previously proposed ideas. The intent of the act is to address specific administrative deficiencies in the tax collection area with specific remedies. It was the culmination of my own experience at the IRS and the result of a research project I conducted for the National Taxpayers Legal Fund. Most important has been the knowledge and insight obtained from various publications, like the 1976 Administrative Conference Report on the IRS, numerous General Accounting Office studies, and several congressional hearings, including the very damaging testimony given by dozens of IRS revenue officers before Senator Levin's committee in 1980.

The Taxpayers' Procedural Safeguards Act is designed to address many of the problems uncovered by those hearings, and to give taxpayers enhanced due process regarding liens, seizures, and installment agreements that do not now exist. The bill is not an attack on the IRS, nor on the tax collection system. The recommendations will not unduly delay or hinder the collection of any tax duly owed.

It's my opinion that the bill will do much to alleviate future problems and complaints related to over-zealous tax collection. It's an undeniable fact of life of the IRS.

Again, I want to thank you for holding these hearings and I would like to commend your staff for their cooperation and help in putting together this proposal.

Senator GRASSLEY. Thank you. That was short testimony Did you have a written statement you wanted included in the record?

Mr. KEATING. We are submitting a joint written statement.

Senator GRASSLEY. All right. Thank you very much.

Now I have questions for each of you separately. But since you are at the table, if either one of you want to comment, I would appreciate your making that decision and just chiming in.

For Mr. Keating, is legislation required to achieve the same goals as expressed in my bill or can the same safeguards be implemented through clarifying or additional requirements to the regulatory process?

Mr. KEATING. I would make two comments on that. First, I would say Commissioner Egger probably knows better than anyone the extent the power of his regulatory authority. He did indicate that several of the changes could be made through regulation.

However, I think it is worthwhile putting these provisions in the code simply because it would recognize them more strongly—first of all, we would have the intent of Congress in the code, and, second, the code more respected by the IRS and its employees. I think that would be the way to go on these set of reforms.

Many of the reforms in this bill could not be implemented without legislation.

Mr. WADE. I would also like to add that I think that many of these ideas, if they were incorporated as IRS regulations, they really don't give the taxpayers any rights of due process. Basically, the regulations would guide the IRS, but the IRS would not be necessarily bound by them.

We find that in the collection division a lot of the things that the Commissioner said incorporates various IRS policies, but we find what happens in the field in the implementation of those policies is not necessarily consistent with the way the manual is written, and according to the regulations. And by incorporating some of these particular items in the code, it will make sure that these particular things would be taken care of, certain due procedural rights.

Senator GRASSLEY. So even though it can be done by regulation, even in those instances where it can be done, you still would like to see it done through legislation?

Mr. KEATING. Yes.

Senator GRASSLEY. I would like to have you kind of speculate, or if you have an exact number, that's all the better, on how many taxpayers do you believe would benefit from the passage of this legislation? That's not my way of inviting all taxpayers. I was more or less involved with those that may have been involved with increased levy and seizure. Those things.

Mr. KEATING. I don't have any numbers on that. But first of all, I think all taxpayers would indirectly benefit from this legislation because there would be, I think, less fear of the IRS, less intimidation. People, I think, would see the agency as being more reasona-

ble with these reforms in place. One of the problems is that many people just have an irrational fear about the IRS. Anything that we can do to better balance the powers of the IRS with the rights of the taxpayers, I think will create a more favorable climate. You do not see the same sort of fear of local tax officials. It just does not exist. Yet local taxing authorities manage to collect revenue without terribly much difficulty. Of course, they don't collect nearly as much as the Federal Government so you probably do need—or the Federal Government will probably always have an agency with far more intimidation than the local governments.

Getting the rights of taxpayers more directly addressed by the tax code will create a better climate for all taxpayers. Maybe Jack has some statistics on actually how many people could be affected on a yearly basis by these provisions.

Mr. WADE. Right. When you talk about the levy and seizure provisions, you are actually talking about 1.5 million people, 1.5 million taxpayers basically. In 1983, there was something like 1.4 million notices of levy served by the IRS on paychecks and bank accounts, and roughly 16,000 seizures of various types of personal real property.

Senator GRASSLEY. Under what circumstances does the IRS revoke installment agreements? And how do they do that without notifying the taxpayer?

Mr. KEATING. Well, from the Levin hearings and other hearings, the usual instances seem to occur when there is a change of personnel in a particular office and when someone decides to make enforcment tougher or more aggressive. The installment agreements can be broken.

From what I can tell, there is no formal requirement that there be any notification. There certainly isn't within the tax code itself. There is no appeal procedure, as S. 2400 would provide for.

Mr. WADE. The breaking of the payment agreements is kind of an unusual situation. It seems to happen and occur a lot more than I had really envisioned it. But it does seem to occur when there has been a change in either the revenue officer working the case or a group manager wants to put a new emphasis on collection. And I have had other revenue officers tell me that they have been given marching orders by their bosses—well, look, this guy has been delinquent before and even if he is current on this agreement, we are just going to break it. We want this tax collected now.

You see, there is an emphasis on over-age cases. Once a case gets over 1 year old, people start getting panicky about it. The supervisors have to submit reports to thebranch chiefs. They have to submit reports to the division chiefs. They have to submit reports to the regions, et cetera. Why is this case open? Why hasn't it been closed? And so the pressure comes on down the line on a case that is over 1 year old to get it closed. So sometimes they will either arbitrarily abrogate the previous agreement or find some way to nit-pick the agreement so that they could sort of legitimately break it.

Senator GRASSLEY. Will the expanded notices for the redemption and release of lien against taxpayer—will it give taxpayers greater information about removing or securing their property?

Mr. KEATING. I very much doubt that it would. I think any taxpayer who is in that position who may attempt such a thing probably already knows pretty well what is going to happen. These notices are primarily aimed at those people who do not know what will happen or what they can do to release their property once it has been seized. So I think, as the GAO surveys earlier pointed out, many people don't even know about the seizure power. And over half of them didn't know what to do in their particular case.

Mr. WADE. Senator, you will always have taxpayers who will try to secret their property. As a former revenue officer, I know that once you start working with a taxpayer, after you go through the notice process, and then you go through the personal contact process, the stronger you get in your demands on the taxpayers, the more nervous they begin to get about you seizing their property, and the more likely they are to start moving things around. For example, when I used to collect taxes in Woodbridge, I had truck drivers that used to park their trucks across town somewhere. And this went on for weeks. You know, I couldn't find them. So there is always a certain element that is going to do that anyway.

We are not changing the notice of intent to levy notice to the point where I think it is going to unduly alarm people. But what we are asking is that the notifications in this notice of intent to seize be giving taxpayers certain information like their administrative appeals rights, rights to any other alternatives that may be available.

The idea here is to stress upon the taxpayer the importance of the seizure process, and that it doesn't necessarily have to occur. That if they do come forth and be a little more cooperative, then perhaps the IRS could work something out, and just let them know that there are other alternatives available.

Senator GRASSLEY. I would like to draw on your experience with the IRS problem resolution staff and the ombudsman. I would like to know whether or not they are helpful in resolving taxpayers' problems. And would they use taxpayer assistance orders if they could issue them?

Mr. KEATING. I have fairly limited experience with the problem resolution program, although I have referred some taxpayers to it. I haven't gotten much feedback on it.

I think they would definitely use the taxpayer assistance orders. If a power like that is available, if something is clearly going awry in the process where the taxpayer is not being given his full rights, then that would be an important check on the agency because it would know that these orders can come from the ombudsman's office. I think they occasionally would be used, but simply the fact that they existed, I think, would also help give the IRS more incentive to more efficiently and fairly administer the safeguard provisions.

Mr. WADE. As I understand it, the problem resolution officer does not have formal intervention powers in the collection division. What he has is sort of like a gentleman's agreement basically. The taxpayer makes contact with him and says I don't owe the tax or whatever. Then the problem resolution officer is supposed to find out and give him an answer.

But if the Collection Division is very adamant about proceeding with the collection activity on it, the problem resolution officer cannot stop it, even if he has reason to believe that the taxpayer may not owe the tax or that the collection division may be heavy-handed in their seizure activity or whatever. And I have had revenue officers tell me that there have been conflicts between chiefs of collection and problem resolution officers over that very issue.

Mr. KEATING. One can imagine, just knowing how the incentives are in a bureaucracy, how that will likely be resolved. Without real powers anyone in the problem resolution program or the ombudsman office would be very reluctant to strongly press their case because ultimately there is nothing they can do. Ultimately their career path or their career goals in the IRS may be to get out of this particular office or program. It may not look good on their personnel record to be someone who is too aggressive in pressing taxpayers' rights.

We might attract a whole different set of people in the ombudsman's office if that office had more real powers. So we have to look at the incentives for people that work in these offices, and how much power they will actually have. If they have some power, if they can correct injustices, or correct wrongs inside the service, they are more likely to aggressively stand up for the taxpayer. I think that's just human nature.

Senator GRASSLEY. From your experience—I suppose this would be more to you, Mr. Wade—to what extent is a written advice contradicted during a subsequent audit? Is there any way of knowing?

Mr. WADE. I can't answer that.

Senator GRASSLEY. Have you got any perception on the subject? How about you?

Mr. KEATING. Well, again, I would just refer earlier—I think it would be worthwhile for the IRS to come up with a simplified program for written advice to taxpayers. If they think that the oral advice is something that is too complicated or something that is too difficult to resolve over the phone—most of the phone questions, I am sure, are of a fairly simply nature. How to get your married taxpayers tax deduction, that type of thing. But if something is fairly complicated, I think there ought to be an expedited or simplified private letter ruling process where there is a fairly easy procedure for the taxpayer to explain his particular problem and ask for a private letter ruling, knowing how long that might take and so on and so forth.

Senator GRASSLEY. Do you have any concern where we talk about the increased exemptions from levy requirements and the fact that these are needed? That when you start exempting $20,000 of property, $10,000 worth of tools that are used in the trade, and the residence and the car in the trade or business exemption, might make it impossible for the IRS to collect deficiencies at all?

Mr. KEATING. I don't think that is going to be assignificant problem. I think at the very least we ought to adjust the 1954 code exemptions for inflation. That wouldn't bring it up to what is in S. 2400, but it would still be quite a bit higher than the TEFRA changes. I understand that Citizens' Choice is working on an inflation adjustment estimate of the 1954 code. Perhaps they can give you the exact figures on it.

But ultimately the IRS' powers are very strong. Still, living on that amount of money per week is hardly something worth doing for most people. There are people living today on exemptions—Karl Hess is one example, living out in West Virginia. I don't think the exemptions will make more people go the way of Karl Hess. But we may see more people protesting and avoiding taxes. But I think it will be an insignificant amount because the exemptions are still low.

Mr. WADE. These particular exemptions arose out of an old law. I think it was 1866 and was an excise tax on cotton. At the time there was about $450 worth of exemptions. And until TEFRA changed it to $1,000, it was $500 for 100 years or something.

The idea of increasing these exemptions is really to recognize a certain self-sufficiency of the taxpayer, and also to try and create a little bit of safeguard there that the tax code doesn't give that the bankruptcy courts do. Of course, the bankruptcy law gets very complicated. But the $20,000 exemption is only for individual income taxpayers. And your average middle-class taxpayer can easily have $20,000 worth of property in his household.

Under the tax code the way it is now, the IRS could seize and sell just about everything a taxpayer owns except for $1,500 worth of household effects. Even if $20,000 is too high, it seems that there should be some sort of a good base in there that would at least prevent the IRS from seizing and selling a taxpayer's entire household full of furniture. That doesn't normally happen, by the way. As a matter of fact, the only household effects I've ever heard of that have been seized were Tongsun Park in the Korean investigation a few years ago. And that was certainly over $20,000 worth. It's not a serious problem, but I think that since this particular provision has been revised only once in 120 years that certainly the whole concept needs to be looked at.

Mr. KEATING. Again, the bankruptcy provisions—I don't have the exact numbers with me—are still far, far more generous than the current exemptions with regard to property, and I think the tax code ought to reflect the same type of principles that we give to debtors.

Senator GRASSLEY. I would like to have you comment on the necessity for increasing the 30 days, the levy notice or the notice on levy.

Mr. WADE. The notice of intent to levy?

Senator GRASSLEY. Yes. The bill changes it to 30 days. Not less than 10 days to no more than 30.

Mr. WADE. No more than 30. Right now under the bill, you have a 10-day requirement. The IRS by policy allows the revenue officer to go 120 days without giving the taxpayer additional notice of intent to seize, if they are going to seize on wages and salaries. In other words, the code requires 10 days, but a revenue officer can go 120. One hundred and twenty days seems an awful long time. There are too many cases where a taxpayer has been given his notice properly so, but then because of a long stretch of time he tends to think that the IRS has either forgotten about him or maybe it has been straightened out or whatever. And then the next thing you know he gets a phone call and his paycheck or his bank

account has been seized. And this is an attempt to really try to cut down on the 120-day period.

Now the IRS manual also does not address the 120-day period to seizures of any other property other than wages and salaries. So essentially under IRS policy once you give them that 10-day notice and demand, you could go a year or 2 years without giving them another notice or letting them know that you intend to seize.

Senator GRASSLEY. As you know, many revenue agents don't make a levy if the cost of the levy exceeds the value of the asset. Would codification of this clarify current practice?

Mr. WADE. What was the question again?

Senator GRASSLEY. Well, as you know, in many instances revenue agents on their own do not make levies if the cost of levy exceeds the value of the asset. So we are going to codify in this bill, S. 2400, this regulation. Would that clarify the current practice?

Mr. WADE. Yes. There already is a prohibition in the manual against making essentially no equity seizures or what we call uneconomic seizures here.

Senator GRASSLEY. There must be some abuse of that.

Mr. WADE. There is. I have some friends of mine who are still in the collection division who tell me stories all the time where they have been given instructions to go out and make no equity seizures in clear violation of the manual.

This is another problem where the IRS policy says one thing, but what is going on in the field may be something entirely different. And a lot of times the local group managers make their own policy, run their own show. And a taxpayer really has no protection from something like that. And if a particular group manager tells his revenue officer to go out and make a no equity seizure, then the revenue officer has got to do it. He has no other choice or else he may get a reprimand for not obeying his orders.

And now under this new Civil Service Reform Act they have what is called "critical job elements." And these critical job elements are 10 elements of the job, and 9 of them are critical, and only 1 of them is not, which means that if you are insubordinate in any way by not going along with the group manager's orders, he can give you a 90-day letter and terminate your employment.

So even a revenue officer has no means of protection either against a group supervisor who would have him violate the manual.

Mr. KEATING. The codification and the existence of the taxpayers' assistance orders would give, in my opinion, taxpayers stuck in this situation of ordinary means who don't have access to expensive legal help a reasonable shot at getting the problem corrected through the office of the ombudsman.

Senator GRASSLEY. What's your opinion on IRS personnel at any level? But, specifically, I suppose we talk more about the telephone situation, information, the 800 number, in giving their name to the taxpayers who call in for information.

Mr. KEATING. What do I think about requiring that they give their name?

Senator GRASSLEY. Yes.

Mr. KEATING. I can't imagine anything wrong with that at all. I think it would probably be a good idea. For one, as you mentioned

earlier, simply giving one's name is like those inspection tags you get when you buy shirts or other consumer products. If it has someone's name on it, it is more likely to be properly made. If people are telling their names to people over the phone, and the advice is incorrect and someone finds out later, presumably they could call the problem resolution program office, or someone in the IRS, to say such and such a person told me this, but he has clearly made a mistake here. You should tell him to straighten up on that particular piece of information.

Simply associating your name with information you give would make people think twice about how good their advice is. It may spur IRS employees more strongly to self-improvement. I think that's a good idea.

It would also allow the taxpayer that remembers the name and wrote it down to perhaps also abate a penalty later on because of the circumstances. It wouldn't require the IRS to do so, but at least the taxpayer would have some information showing that he did make a reasonable attempt to find an answer to a question.

Senator GRASSLEY. In your statement about the political appointee of an ombudsman, did you state why you thought a political appointee would be a good change?

Mr. KEATING. I think it would be a good change because we would be going outside of people that would have a career interest in advancing within the Service. And we see this in the Pentagon too, quite frankly. The career interests of someone may override the public interest. And I think the same thing is natural in any Government agency. That when we go to a political appointee there is more interest in protecting the taxpayers' rights rather than tracking down every last dollar, whether it was gotten legitimately or in violation of some procedure.

With a political appointee I think it's more likely that there will be more aggressive action in the office of the ombudsman to safeguard and protect taxpayers' rights because ultimately that political appointee must be held accountable in the next election.

Senator GRASSLEY. Those are my last questions. I thank you very much.

Mr. KEATING. Thank you.

Senator GRASSLEY. Our next witness is Mr. Jule R. Herbert, Jr., with the National Taxpayers Legal Fund. Since 1979 Mr. Herbert has served as president of the National Taxpayers Legal Fund, a nonpartisan charitable foundation which engages both in public interest legal work and public policy research. He is a native of Alabama and received degrees in economics and law from the University of Alabama. And he practiced in Alabama from 1975 to 1979. And in 1979 he was named director of the Tax Action Committee of the National Taxpayers Union. And he was vice president of the NTU during 1980 and 1981.

It's good to see you again, sir.

STATEMENT OF JULE R. HERBERT, JR., PRESIDENT, THE NATIONAL TAXPAYERS LEGAL FUND, WASHINGTON, DC

Mr. HERBERT. Thank you. I was happy to see that many of the parts of this bill were contained in a recommendation from the

book called "The Power to Tax," that our foundation published last year, and was written by one of the former witnesses, Jack Wade.

Senator GRASSLEY. It's a tribute to the people in the private sector who are willing to contribute to the legislative process.

Mr. HERBERT. Well, thank you.

I commend this subcommittee for undertaking these hearings, and appreciate this opportunity to testify. We have had opportunities in the past to testify on abusive collection practices of the IRS. I especially call the subcommittee's attention to the testimony given on May 20, 1980 before the Subcommittee on Oversight of the Ways and Means Committee of the House. At that time former Senator Eugene McCarthy, who is chairman of our organization, introduced copies of letters from IRS agents complaining about the pressure they were under to use property seizures as a first resort practice and otherwise to treat delinquent taxpayers in a way contrary to the rules and public pronouncements of the IRS.

Senator McCarthy further outlined the variety of case studies undertaken by our organization, the National Taxpayers Legal Fund, as anecdotal evidence of the widespread nature of the problem as it then existed, and, in fact, continues to exist today, at least as perceived by the American public.

Incidentally, a clear distinction should be made at the outset between the collection practices of the IRS and the growing incidence of either outright tax resistance or widespread under-reporting of income. If these phenomena are related in any way at all to the perceived abusive collection practices of the IRS, it is likely that it is in an inverse and not a direct way. That is to say that the perception of IRS abuse in collection areas simply adds to the overall feeling that the entire tax system is outrageously unjust and deserves little respect. If this is true, then typical IRS intransigence over legislative reform in this area, such as we have just heard, is likely to be perversely counterproductive to its stated mission of enforcing the tax statutes efficiently and fairly.

And by way of example, when Commissioner Egger suggested that by upping the limit from $75 to $200 a week for a wage earner to be exempt from levy, and at the same time making the point that 96 percent of their collection cases were involved with less than $5,000, and then the inference that he drew was that if this bill passed, that you were just making a whole fraction of the tax-system voluntary. They are much exaggerating the importance of what would happen if you just did the decent thing and let a guy have $200 a week to live on.

Additionally, it would be a far happier occasion if the provisions of this bill were being discussed as part of and in the context of a long overdue and long delayed debate over fundamental reform of the Federal taxing system—a reform aimed at simplification, equity, and less than confiscatory marginal rates. Instead the debate over taxes this year has apparently been narrowed to the question of how fast Federal revenues can be raised without giving another knock-out blow to the private sector.

However that may be, the rationale for S. 2400 is really independent from revenue considerations and from the question of how to redesign a tax system which would have less bad consequences on private productive activity. Its merits stand on their own.

But ultimately, tax collection practices cannot be divorced from the issue of the fairness of the tax system itself. How can there be a fair collection practice if, as Jimmy Carter said when he was nominated at the Democratic Convention in 1976, it is time for a complete overhaul of our system; it is a disgrace to the human race.

From my own discussions with literally hundreds of troubled and pressured taxpayers in the past five years, I have concluded that most incidences of harassment or abuse or violation of the IRS policy occur because there is a knowledge vacuum about IRS practices. This can exist for a number of reasons, but the most plausible explanation is that the tax industry by which I mean the accounting and legal professions and the business lobbies have enough to handle just trying to keep up with changes in the tax code. Even though most delinquent taxpayers are small business owners or otherwise self-employed for at least part of their income, they are rarely the financial mainstay of tax practitioners. Most of them can barely afford to have their tax returns prepared, much less pay for active representation against the resources of the IRS.

Most violations of civil liberties or taxpayers' rights would probably not occur if the taxpayer knew as much as the IRS collection employee. It is because taxpayers do not know their rights or what options and alternatives are available to them that they are not able to identify bureaucratic excesses, violations of policy or procedure, or an infringement of their civil liberties. This public ignorance of which most IRS agents are aware makes it easy for overzealous tax collectors to conduct either illegal or improper action or to intimidate delinquent taxpayers through various subtle or psychological maneuvers.

A taxpayer who is being audited has little problem in obtaining representation. Perhaps as many as 50 percent of taxpayers being audited are represented by a tax practitioner, who could be either an attorney, a CPA, or an enrolled agent. But revenue officers and other collection division employees probably see representation in less than 5 percent of their cases. Of course, an overwhelming majority of taxpayers seek legal assistance when threatened with criminal charges, but this number is very low relative to the number of taxpayers who are simply delinquent in paying what the Government has demanded from them.

The result is that the delinquent taxpayer is treated as a nonentity or as not worthy of representation or protection.

This attitude may exist for several reasons. Very few tax practitioners know anything about the collection division's policies or procedures. And it usually isn't worth their while to learn. The meat and potatoes of a tax practice is tax planning, tax return preparation, accounting preparation and audit representation.

Since tax collection law and procedure is an equally arcane area, as the above, very few lawyers or CPA's are able to help their clients in this area because they, too, are ignorant of the law and procedures. Naturally, the IRS has not seen fit to make it any easier in this area by making available in clear and precise fashion just what standards, rules and procedures it follows.

Many tax practitioners have only a minimum amount of time available to assist their clients with collection related problems.

They may be leery of spending hours assisting a nonpayer, with the concern that a client who cannot pay the IRS surely cannot pay them full representational fees.

The lack of legal representation for delinquent taxpayers explains why the rights of these Americans have largely been ignored. If tax practitioners aren't involved in the daily field administration of collection procedures, then they are unlikely to be aware of the abuses that occur and what remedies may be available for their clients. This inattention results in a tremendous administrative leeway for the IRS collection division. Except for nominal GAO efficiency reviews, the IRS operates with complete freedom to implement policies or procedures, and officials in the field are free to interpret national office policy in whatever manner, and for whatever purposes and ends they choose.

The situation begs for oversight and remedial legislation by Congress. S. 2400 goes a long way toward doing precisely that. If the members of this Congress have indeed concluded that some fraction of the projected budgetary deficits are the fault of those who pay the taxes and that taxpayers, rather than the various special interests who are the recipients of Government spending, should bear the costs associated with getting the budget under control, then the protections embodied in this bill are even more important. You can be sure that any effort to squeeze an additional $48 to $200 billion in tax dollars over the next four years out of the private economy is going to result in the creation of a growing group of delinquent taxpayers.

It is only fair that the most basic procedural rights of the put-upon taxpayer should be protected, and that taxpayers be advised what, in fact, these rights are. I hope that any tax bill which emerges from the Finance Committee this year will incorporate the provisions of S. 2400.

There are several important provisions of the bill, and I will try to restrict my comments to one that seemed to catch most of the attention from the Commissioner. And that was the expansion of the value of the property exempt from levy or seizure.

Now, until the passage of the Tax Equity and Fiscal Responsibility Act of 1982, the exemptions of $500 for fuel, provisions, furniture, and personal effects, and $250 for the books and tools of a trade, business, or profession, had not changed since the adoption of the 1954 code. Even though these exemptions were raised to $1,500 and $1,000, respectively, they still provide inadequate protection for taxpayers since they do not reflect the substantial increases in the cost of living since 1954.

The figures in 1954 were also arbitrary. So it makes no real sense to just index those earlier provisions. We should try to establish a reasonable value of how much property we want to protect from the tax collector.

The present law derives largely from an 1866 statute enacted primarily to collected excise taxes on cotton. Exemptions were allowed at $50 for fuel, $50 in provisions, and $300 in furniture, a total of $400, which today is only $1,500. In 1866 the books, tools, or implements of a trade or profession were exempted at $100. Compare that to today's exemption of $1,000.

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Also, the present section only applies to a head of household, meaning that such items are not exempted at all for single persons. In today's society, where many taxpayers are single, and where increasing focus is being placed upon the discriminatory aspects of our laws, the Congress should not allow this bias to continue.

The exemption which is allowed should be raised to a level that would protect the average middle-class taxpayer's entire household effects. While the IRS has not made it a practice to enter into taxpayers' houses for the purpose of seizing property, the Supreme Court's *G.M. Leasing* decision may now provide an opportunity for the IRS to obtain a court-ordered writ to do so.

If this is true, the IRS now has the power to enter a taxpayer's residence and seize everything in the household but $1,500 worth of property. The IRS should not have the authority to seize and sell almost everything a taxpayer owns. The $20,000 limitation as provided for in the bill would be sufficient protection to protect almost every household in the country.

Senator GRASSLEY. Before you go on, maybe at this point you could answer a question that I was going to ask you that I asked the previous panel.

Mr. HERBERT. Yes, sir.

Senator GRASSLEY. That's about whether or not these increases of $20,000 in property exemption and $10,000 in tools, and the residence, the car, the trade or business exemption is going to make it impossible for the IRS to get the things that are due.

Mr. HERBERT. Well, I think that it's true that someone who is willing to live within those limitations could opt out of the system. And that would be a problem.

But I think on the other hand the renewal of respect for the IRS and for the tax system as a whole would offset that very much. I think the perception of sort of the overbearing nature and the ultimate impact of the IRS is the type of thing that is engendering the disrespect that we now have. And I think that would offset each other. One of the IRS spokesmen suggested some sort of—a $1 billion lag as being sort of the ultimate cost of this bill. That strikes me as probably correct. But they would have a problem of getting from here to there in the sense of getting into this new system of relying mostly on what would be the affect of payouts periods. That they couldn't go out and seize or levy upon property until they had gone through the system of setting up a program where a person would pay his back taxes in installments that he could manage. And only after he had failed to keep one of those contracts could they go in and levy and seize.

I think there would be a lag while they caught up. But I think the revenue impact would be insignificant. That's my judgment. It certainly would be interesting to see. And I don't think it's something that would be irredeemable if my judgment was wrong in this matter.

As Mr. Wade pointed out, we have been using these figures for 150 years. I think most people consider them to be unjust.

A person loses his job and goes on food stamps and unemployment and gets more income than the small businessman who is self-employed. He's subject to the same recession and he has no re-

course at all. And then has these kinds of seizures that he's looking at.

Well, let me conclude.

Ultimately, though, changing a few procedural rules about the tax collecting process is just the beginning. It's no longer denied that the state of the economy over the last several decades was caused in substantial part by the tax system. The fact that this system has a pervasive institutional bias against saving, capital formation, work incentives, price coordination seems now to be generally recognized.

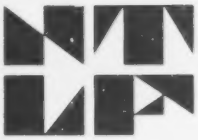
And certainly the positive reforms which were passed in 1981, especially the tax rate indexing and the reduction of the marginal rates, could not have been passed in the intellectual climate of just a few years earlier. That more was not done in 1981 was not because the advantages of easing the constraints imposed by the tax system on the market economy were not seen by many because there has been little progress in linking tax reform to necessary reforms of Government spending.

I would argue that the cost of runaway government spending is much greater than the amount of resources which are thus taxed, borrowed or taken from the American people through the process of inflation. Its growing drain on the ability of government to conduct itself in a rational manner not only presents an almost insurmountable obstacle to needed tax reform, but in addition entails negative nonfiscal effects on the social structure, damaging thereby the market economy and, indeed, the various prospects for a stable political order.

I hope this whole tax system will be viewed very closely by this committee this year and in the coming years. I wish the members of this subcommittee the best of luck and wisdom in addressing these problems.

Thank you.

[The prepared statement of Mr. Herbert follows:]



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Statement of

Jule R. Herbert Jr.

President

National Taxpayers Legal Fund

to the
Subcommittee on Oversight of
the Internal Revenue Service
Senate Committee on Finance

Hon. Charles E. Grassley, Chairman

Taxpayers' Procedural Safeguard Act (S.2400)

March 19, 1984
Washington, D.C.

I am Jule R. Herbert Jr., President of the National Taxpayers Legal Fund, a non-profit, tax-exempt charitable foundation with headquarters in Washington, D.C. NTLF engages both in public interest legal work and public policy research designed to reduce the burdens of government and expand the civil and economic rights of all citizens, including the right to own and control private property secure from excessive or arbitrary seizure or taxation.

I commend this Subcommittee for undertaking these timely hearings on S.2400. Representatives from the National Taxpayers Legal Fund have had the opportunity to testify on previous occasions on the abusive collection practices of the IRS.

I especially call this subcommittee's attention to testimony given on May 20, 1980, before the Subcommittee on Oversight of the Ways and Means Committee of the House. Former Senator Eugene J. McCarthy, who is chairman of this organization, introduced copies of letters from IRS agents complaining about the pressure they were being put under to use property seizures as a "first resort" practice and otherwise to treat deliquent taxpayers in a way contrary to the rules and public pronouncements of the IRS. Senator

McCarthy further outlined a variety of case studies undertaken by NTLF as anecdotal evidence of the widespread nature of the problem as it then existed and, in fact, continues to exist, at least as perceived by the American public.

Incidentally, a clear distinction should be made at the outset between the collection practices of the IRS and the growing incidence of either outright "tax resistance" or widespread under-reporting of income. If these phenomena are related in any way at all to the perceived abusive collection practices of the IRS, it is likely that it is in an inverse and not a direct way. This is to say that the perception of IRS abuse in collection areas simply adds to the overall feeling that the entire tax system is outrageously unjust and deserves no respect. If this is true, then typical IRS intransigence over legislative reform in this area is likely to be perversely counterproductive to its stated mission of enforcing the tax statutes efficiently and fairly.

It would be a far happier occasion if the provisions of this bill were being discussed as part of and in the context of a long-delayed and long-overdue debate over fundamental reform of the federal taxing system -- a reform aimed at simplification, equity, and less than confiscatory

marginal rates. Instead the debate over taxes this year has apparently been narrowed to the question of how fast federal revenues can be raised without giving another knock-out punch to the private sector.

However that may be, the rationale for S.2400 is really independent from revenue considerations and from the question of how to redesign a tax system which would have less bad consequences on private productive activity. Its merits stand on their own.

From my own discussions with literally hundreds of troubled and pressured taxpayers in the past five years, I have concluded that most incidents of harassment or abuse, or violations of IRS policy, occur because there is a knowledge vacuum about IRS operations. This can exist for a number of reasons, but the most plausible explanation is that the "tax industry" (the accounting and legal professions, and the business lobbies) have enough to handle just trying to keep up with changes in the tax code. Even though most deliquent taxpayers are small business owners or otherwise self-employed at least for part of their income, they are rarely the financial mainstay of tax practitioners. Most of them can barely afford to have their tax returns prepared, much less pay for active representation against the resources of the IRS.

Most violations of civil liberties or taxpayers' rights would probably not occur if the taxpayer knew as much as the IRS collection employee. It is because taxpayers do not know their rights, or what options and alternatives are available, that they are not able to identify bureaucratic excesses, violations of policy or procedure, or an infringement of their civil liberties. This public ignorance, of which most IRS employees are aware, makes it easy for overzealous tax collectors to conduct either illegal or improper actions, or to intimidate deliquent taxpayers through various subtle or psychological maneuvers.

A taxpayer who is being audited has little problem in obtaining representation. Perhaps as many as 50 percent of taxpayers being audited are represented by a tax practitioner, who could be either an attorney, CPA, or an enrolled agent. But revenue officers and other Collection Division employees probably see representation in less than 5 percent of their cases. Of course, an overwhelming majority of taxpayers seek legal assistance when threatened with criminal charges, but this number is very low relative to the number of taxpayers who are simply delinquent in paying what the government has demanded from them.

The result is that the delinquent taxpayer is treated as a nonentity or as not worthy of representation or

protection.

This attitude may exist for several reasons:

Very few tax practitioners know anything about the Collection Division's policies or procedures, and it usually isn't worth their while to learn. The meat and potatoes of a tax practice is tax planning, tax return preparation, accounting report preparation, and audit representation.

Since tax collection law and procedure is an equally arcane speciality, very few lawyers are able to help their clients in this area because they too are ignorant of the law and procedures. Naturally the IRS has not seen fit to make it any easier in this area by making available in clear and precise fashion just what standards, rules, and procedures it follows.

Many tax practitioners have only a minimum amount of time available to assist their clients with collection-related problems. They may be leery of spending hours assisting a nonpayer, with the concern that a client who cannot pay the IRS surely cannot pay them full representational fees.

The lack of legal representation for delinquent taxpayers explains why the rights of these Americans have been largely ignored. If tax practitioners aren't involved in the daily field administration of collection procedures,

then they are unlikely to be aware of the abuses that occur and what remedies may be available for their clients. This inattention results in a tremendous administrative leeway for the IRS Collection Division. Except for nonminal GAO efficiency reviews, the IRS operates with complete freedom to implement policies or procedures, and officials in the field are free to interpret national office policy in whatever manner, and for whatever purposes and ends they choose.

The situation begs for oversight and remedial legislation by Congress. S.2400 goes a long way toward doing precisely that. If the members of this Congress have indeed concluded that some fraction of the projected budgetary deficits are the fault of those who pay the taxes and that taxpayers, rather than the various special interests who are the recipients of government spending, should bear the costs associated with getting the budget under control, then the protections embodied in this bill are even more important. You can be sure that any effort to squeeze an additional $48 to $200 billion in tax dollars (or, more accurately, $726 billion in additional tax revenues in the next four years over this year's level) out of the private economy is going to result in the creation of a growing group of "deliquent"

taxpayers. It is only fair that the most basic procedural rights of the put-upon taxpayer should be protected, and that taxpayers be advised what, in fact, these rights are. I hope that any tax bill which emerges from the Finance Committee this year will incorporate the provisions of S.2400.

Several important provisions of the bill deserve special comment:

1) The extension of the period of notice and demand from ten to thirty days before levying upon property.

The current 10 day notice and demand period is not reasonable for a taxpayer who needs to borrow the money or raise cash in some way. Thirty days are more reasonable.

As a practical matter, because of the IRS notice process, where three or four notices are sent to taxpayers over a 12 week period, very few levies are made within 30 days of assessment. The levies that do occur within this period are usually related to unpaid employee withholding taxes, and usually where the revenue officer has obtained a voluntarily filed form 941 and has promptly assessed the tax. Revenue officers frequently threaten to seize a taxpayer's business within hours of obtaining an immediate assessment, thereby illegally invoking jeopardy authority using the fact of the delinquency itself as evidence that

collection of the tax is in jeopardy. Then, in order not to break the law, the revenue officer waits 10 days and then seizes.

Once the wheels are in motion to seize, the revenue officer will not withdraw from the process for any reason other than full payment. A rapid seizure may actually jeopardize collection itself by making it more difficult for the taxpayer to borrow money to pay the tax. Private and commercial lenders are more reluctant to lend money for a business already under seizure by the IRS.

2) Expansion of the value of property exempt from levy.

Until the passage of the Tax Equity and Fiscal Responsibility Act of 1982, the exemptions of $500 for fuel, provisions, furniture and personal effects, and $250 for the books and tools of a trade, business or profession had not changed since the adoption of the 1954 code. Even though these exemptions were raised to $1500 and $1000, respectively, they still provide inadequate protection for taxpayers since they do not reflect the substantial increases in the cost of living since 1954.

The present law derives largely from an 1866 statute enacted primarily to collect excise taxes on cotton. Exemptions were allowed at $50 for fuel, $50 in provisions,

and $300 in furniture, a total of $400 which today is only $1500. In 1866 the books, tools or implements of a trade or profession were exempted at $100; compare that to today's exemption of $1000.

Section 6334(a)(2) presently only applies to a head of household, meaning that such items are not exempted for single persons. In today's society, where many taxpayers are single, and where increasing focus is placed upon the discriminatory aspects of our laws, the Congress should not allow this bias to continue.

The exemption allowed in IRS 6334(a)(2) should be raised to a level that would protect the average middle-class taxpayer's entire household effects. While the IRS has not made it a practice to enter into taxpayers' houses for the purpose of seizing property, the Supreme Court's G. M. Leasing decision may now provide an opportunity for the IRS to obtain a court-ordered Writ of Entry to do so.

If this is so, the IRS now has the power to enter a taxpayer's residence and seize everything in the household but $1500 worth of property, a paltry, insignificant sum. The IRS should not have the authority to seize and sell almost everything a taxpayer owns. The $20,000 limitation would be sufficient to protect almost every household in the country.

Section 6334(a)(3) should be changed to encompass other items that better reflect the essentials needed for an individual to be able to support himself. The right of an individual to be self-supporting needs to be recognized in the levy and seizure provisions of the Tax Code.

3) Establishment of an office of Ombudsman.

NTLF strongly endorses the bill's provision that an Ombudsman be a political appointee, and not a career IRS employee. As a political appointee the Ombudsman would be free to be a true taxpayer advocate without worry for his career aspirations within the IRS. This would enable him to operate totally unaffected by how other IRS managers feel about his input into their areas of responsibility. Also, a political appointee will come to the job totally free in his thinking and expectations, and independent of the restrictive mission-oriented mentality that besets so many career executives. Not being engraved with IRS philosophy, thinking, approaches, and methods of operation, he should be more perceptive to the needs of taxpayers and more receptive to change the old ways of doing things.

The IRS has expressed some concern about the independence of the Ombudsman being a political appointee. Commissioner Egger has testified that such independent power "would not provide a balance between protecting the

government's and taxpayers' interests and would open up dangerous potential for political abuse of the tax system." These arguments do not really hold water. After all, the Commissioner is a political appointee and few have suggested that that fact opens up dangerous potential for political abuse. I'm convinced that there is room in the IRS for one more political appointee.

Commissioner Egger has also stated that the Ombudsman, "perceived as an independent authority, may be even less effective in working within the Service to resolve individual taxpayer problems and systemic problems." We do not agree with that assessment either. It is true that if the Ombudsman is a career employee, his knowledge of agency operations may expedite the flow of things. But the Problem Resolution Program has been operational for five years and has become firmly established within the IRS bureaucracy. It no longer has much value to the delinquent taxpayer.

In closing, let me again congratulate you for holding this hearing. The conduct of the American taxing system has now become a real danger to our "domestic tranquility."

Of course, changing a few procedural rules about the tax collection process is just a beginning. For example, it is no longer possible to deny that the problems of the U. S.

economy over the last several decades were caused in substantial part by the tax system. The fact that this system has a pervasive institutional bias against saving, capital formation, work incentives, and relative price coordination seems to be generally recognized. Certainly the positive reforms which were passed in 1981 (especially tax rate indexing and the reduction of the marginal rates) could not have passed in the intellectual climate of just a few years earlier. That more was not done in 1981 was not because the advantages of easing the constraints imposed by the tax system on the market economy were not seen by many, but because there has been little progress in linking tax reform to necessary reforms of government spending.

I would argue that the cost of runaway government spending is much greater than the amount of resources which are thus taxed, borrowed, or taken from the American people through the insidious process of inflation. Its growing drain on the ability of government to conduct itself in a rational manner not only presents an almost insurmountable obstacle to needed tax reform, but in addition entails negative "nonfiscal" effects on the social structure, damaging thereby the market economy and, indeed, the very prospects for a stable political order.

The whole ethos which provides the justification for work, saving, voluntary exchange, and property rights is undermined as government spending expands without apparent constraint. If groups can simply "vote" themselves increasingly larger shares of the community's wealth, then the effectiveness of free-market institutions for the production of wealth becomes problematical.

I wish the members of this subcommittee the best of luck and wisdom in addressing these problems.

Senator GRASSLEY. Well, let me make one comment on your statement about raising taxes this session. And for some of us, necessarily a forerunner of our doing that, is the dramatic reduction in the level of a climate. And I hope that preliminary decisions made by this committee, if they are in cooperation with other committees, we can be successful doing them. We aren't going to move ahead with a tax bill until that is done.

Mr. HERBERT. Well, perhaps some of these procedural safeguards could also be part of the negotiations. That the people who are reluctant to raise taxes could use these as bargaining chips also, and along with the spending reductions as necessary.

Senator GRASSLEY. I have just one or two questions. The first one deals with the expanded information requirements to be given with a notice of levy, and upon levy further taxpayer's awareness. Let me start over again. Whether or not the expanded information requirements to be given with a notice of levy and upon levy, whether they further the taxpayer's awareness of their rights.

Mr. HERBERT. I think so. I've seen these notices. Most of the notices are contrary to what is generally presented and are along these lines. You have a right to contest the amount that we say you owe. We have the right to seize your property if you don't pay it by this date. And there are no notices in between. So any sort of additional notice, especially as to the right or potential right that would be granted in this bill, to try to work out an installment payment, which is not included in any of these notices as they are presently being sent out, would be valuable. And, of course, the more time the notice is given or at every opportunity, would be valuable.

As I pointed out in my testimony, the people in this situation, the average delinquent taxpayer, does not have anyone to rely on for advice. He is not represented by counsel or by an accountant or anyone else.

Senator GRASSLEY. What's your experience with the IRS problem resolution staff and the ombudsman, and whether or not they are helpful in resolving taxpayers' problems?

Mr. HERBERT. I have referred, I would say, between 100 and 125 people to that agency after it was set up. And we have attempted to get feedback and monitor how well it has done. My judgment right now is that the agency is mainly an information gathering one. It does not attempt—it doesn't try to steer the taxpayer into insisting on an installment agreement, and that's what they should be doing in these cases. It simply more or less reiterates the position of the IRS that if they do not dispute the amount of the delinquency then their obligation is to pay it in full immediately. That's the situation they find themselves in, then they come back and say we can't help you any further. There is very little effort to advise the taxpayer of what it is that the Revenue officer is doing, and what steps that they are going through as far as determining what options the taxpayer should be allowed. And they don't say if you owe them less than $5,000, then more likely than not they will enter into an installment agreement with them, if you ask for it. But not if you don't ask for it. They don't give advice along those lines. They don't consider themselves advocates for the taxpayer.

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Senator GRASSLEY. I want to thank you for your cooperation and your expert testimony. We will look forward to working with you as this legislation evolves.

Mr. HERBERT. Thank you.

Senator GRASSLEY. Our last witness is John C. Lynch. He is legislative counsel for Citizen's Choice. And Citizen's Choice is a 75,000 member taxpayers' lobby affiliated with the U.S. Chamber of Commerce. His responsibilities include directing the legislative program, extensive lobbying activities, and serving as press liaison and providing legal counsel to the organization.

Before coming to Citizen's Choice he was a member of a private practice of law as a trial attorney. Right?

Mr. LYNCH. That's correct.

Senator GRASSLEY. All right. Let me say before you start that again your organization has been one that in the 3½ years that I have chaired this subcommittee has been very helpful in providing testimony. And we really rely upon your efforts; particularly, because we know that your way in which you determine your members' opinions is very helpful to us, and also in how you encourage that to be expressed to those of us in Congress.

STATEMENT OF JOHN C. LYNCH, LEGISLATIVE DIRECTOR, CITIZEN'S CHOICE, WASHINGTON, DC

Mr. LYNCH. Well, thank you very much, Senator, for those kind comments. I want to commend you and your fine staff for the excellent work you have done on behalf of the American taxpayer over the years. You have distinguished yourself, I think, as a leading advocate of the American taxpayer in the Congress today. And for that you should be commended.

I would also like to commend Mr. David Keating of the National Taxpayers Union, Jule Herbert of the National Taxpayers Legal Fund, and in particular Jack Wade who have helped in formulating the provisions that form a part of S. 2400. And I think their contributions are to be mentioned, and also to be commended.

I'm pleased to have this opportunity to testify before the committee on S. 2400. Citizen's Choice is well qualified to present testimony on this subject, having made a year and half long investigation into taxpayers' attitudes through the National Commission on Taxes and the IRS. The Commission determined that if the relationship between the Internal Revenue Service and the taxpayer were improved, a higher rate of tax compliance would be achieved. The Commission's recommendations to Congress and the IRS were premised on reducing the adversarial relationship and returning volunteerism to our tax system, while recognizing the extremely difficult job the IRS has in administering our complicated Tax Code and calling on Congress to be sympathetic to IRS budget requests. These are worthy goals.

Paying taxes has never been a favorite pastime, and accordingly, the individuals or organization responsible for collecting taxes will never win a popularity contest. On the other less publicized side is the individual who fails to pay his taxes. If his failure is a knowing violation of the tax laws, then he is perhaps even more responsible for the adversarial relationship than the over-zealous IRS official.

Tax protestors—and by tax protestors I mean individuals who choose not to file a tax return—are not to be tolerated. Each of us is fortunate to be a citizen of this country. With that citizenship we assume certain responsibilities, one of which is paying taxes. Though we may not like to, we have no right whatsoever to refuse to fulfill this obligation. As a matter of fact, refusing to pay taxes is one of the most unpatriotic acts a citizen can perform. The detrimental affects are many, and it makes my job tougher and it makes your job, Senator, tougher when individuals refuse to participate in the system.

These individuals, first, who fail to pay their taxes keep the tax rates higher for all of us that do pay our taxes. Second, the refusal to pay aggravates the taxpayer-IRS relationship which results in a more strident collection attitude on the part of the Internal Revenue Service, and ultimately a higher incident of taxpayer abuse.

Third, and most important, tax protestors make our job of protecting those people that do pay taxes more difficult by fostering the us against them attitude that currently prevails. Citizen's Choice members pay their taxes. Citizen's Choice members also recognize that there are legislative improvements to be made in the taxpayer-IRS relationship. Our goal in this area is to make sure that the rights of the taxpayer are protected and that the treatment given the taxpayer is uniformly consistent.

It is this desire for uniformity that forms the backbone of S. 2400. We have found that most of the problems between the taxpayer and the Internal Revenue Service do not stem from official IRS policy as contained in the Internal Revenue manual. The manual establishes the guidelines to be followed in the audit and collection processes. Rather, most taxpayer-IRS problems develop from the discretionary application of this policy.

For example, as Commissioner Egger pointed out and other testifers have pointed out, it is the established policy of the IRS to allow first time tax delinquents to enter into an installment agreement. This gives the taxpayer up to a year to pay his back taxes. Unfortunately there are circumstances where a first time delinquent is not permitted this opportunity. This happens for a variety of reasons, not the least of which is the seizure mentality of some revenue officers in the field. A seizure mentality develops when a revenue officer's advancement is contingent on the number of seizures he makes or the amount of back taxes he collects.

Therefore, entering into an installment agreement can work at cross purposes to an individual's advancement within the Internal Revenue Service.

The subject legislation would codify some of which is already official IRS policy. By doing so, the legislation would help ensure that the treatment of the taxpayer by IRS agents in the field is uniformly consistent. Citizen's Choice, however, though endorsing the legislation almost in whole, has the following suggestions to make.

With regard to the question that has been most discussed, the property and wages exempt from levy, we believe that a compromise can be struck between the figures set forth in the legislation and the position of the Internal Revenue Service wherein the figures would reflect the 1984 valuation of the amounts originally set forth in the Internal Revenue Code of 1954. Mr. Herbert pointed

out that those figures were arbitrarily chosen as well. But I would suggest that they would serve as a good starting point for the eventual compromise which I am sure can be struck.

With regard to the awarding of court cost and certain fees, Citizen's Choice believes that the legislation as it presently reads is unclear because it would require the IRS to substantially justify its position in each law suit it loses. This would be unnecessarily burdensome to the IRS and may protract the litgation resulting in even higher attorney fees for the taxpayer. We suggest that the question—and this may go without saying, but I want to just make it clear—that the question of court costs and certain fees only be addressed if required by the taxpayer, just to make it perfectly clear what the intentions of the legislation are.

With regard to the payment of tax liability in installments, the present legislation would allow the IRS to dissolve an installment agreement if the financial condition of the taxpayer substantially changed. Citizen's Choice believes that installment contracts should be binding regardless of any change in the taxpayer's financial condition.

The purpose of installment agreements is to insure that the Government receives the money it is due, while the taxpayer remains solvent. Because the term of an installment agreement does not usually exceed 1 year, it is unlikely that many of the administrative hearings called for by the legislation would be completed within the term of the agreement itself. Therefore, the hearing procedure would be unnecessarily burdensome to the IRS, and may result in added expenses for the taxpayer who chooses to contest the Government's assertion that his financial condition has changed.

With regard to the office of the ombudsman, this has been a long-standing desire of Citizen's Choice, and informs another one of the recommendations of the National Commission on Taxes in the IRS. The only problem we have with the subject legislation on this point is that we would prefer to see the office of the taxpayer ombudsman set up outside the Internal Revenue Service. The exact same format that is set forth in the legislation is fine as far as we are concerned. But as the president of our organization, Mr. Donahue, is fond of saying, you don't hire the fox to guard the chicken coop. And we believe that in order to insure maximum objectivity that it's necessary that this ombudsman be set up outside the Internal Revenue Service.

While Citizen's Choice seeks protection for the honest taxpayer, we are, as stated, sympathetic to the needs of the Internal Revenue Service. The National Commission on Taxes and the IRS recommended that Congress be responsive to IRS budget requests. Statistics indicate that for every dollar spent on the IRS, there is a return of up to $5 in increased revenue. In an era where there is an annual revenue short-fall of nearly $100 billion, it makes perfect sense to provide the IRS as much help as possible in performing its very difficult job.

I would like to make one comment with regard to what Commissioner Egger was talking about with regard to the education of the taxpayer. Citizen's Choice would suggest that the IRS, though it is making steps in the right direction, falls far short in providing ade-

quate information to the taxpayer. We would suggest some sort of national campaign on the Internal Revenue Service's part to outline to the taxpayer a new attitude on the part of the Internal Revenue Service that would reflect the fact that they are doing their job as part of the Government. That it is the obligation of the taxpayer to pay his taxes. It's an obligation as a citizen. But which states emphatically their viewpoint that they are not out to squeeze every last dollar from the taxpayer, but rather are administering the tax laws. We think that the information that is sent out to the taxpayer—and the IRS should be commended because they have tried to make a better show of this in recent years—is still unclear to many Americans. Even when they receive the documents they cannot understand them. And since most Americans find themselves in a position where they cannot obtain professional advice, the situation becomes aggravated because they simply do not understand what is required of them.

And I think something has to be done on a massive scale in that regard. This is something that will take time, we realize. But nevertheless we strongly endorse this effort.

While we recommend additional assistance to the IRS, Citizen's Choice will remain dedicated to protecting the honest taxpayer. The vast majority of Americans meet their tax obligations. They should not suffer at the hands of the Internal Revenue Service because of the actions of a radical and dishonest few.

On behalf of the members and staff of Citizen's Choice, I offer to this committee and to any of its members in particular our assistance in any way you might find it helpful toward reaching our common goal of a more effective tax administration system. We look forward to working with you toward this end.

Thank you.

[The prepared statement of Mr. Lynch follows:]

CITIZEN'S CHOICE

STATEMENT ON TAXPAYER SAFEGUARDS

Before Finance Subcommittee on Oversight
of the Internal Revenue Service

by
John C. Lynch
Legislative Counsel
Citizen's Choice, Inc.

March 19, 1984

SD-215 of the Dirksen Senate Office Building

I am John C. Lynch, Legislative Counsel of Citizen's Choice, a national grassroots taxpayers' organization founded in 1976.

I am pleased to have this opportunity to testify before the Committee on S. 2400. Citizen's Choice is well qualified to present testimony on this subject having made a year and half long investigation into the taxpayers/IRS relationship through the National Commission on Taxes and the IRS. The Commission determined that if the relationship between the Internal Revenue Service and the taxpayer were improved, a higher rate of tax compliance would be achieved. The Commission's recommendations to Congress and the IRS were premised on reducing the adversarial relationship and returning volunteerism to our tax system; while recognizing the extremely difficult job the IRS has in administering our complicated tax code and calling on Congress to be sympathetic to IRS budget requests.

These are worthy goals, though difficult to achieve. Paying taxes has never been a favorite pastime and accordingly, the individuals or organzation responsible for collecting taxes will never win a popularity contest. On the other less publicized side is the individual who fails to pay his taxes. If his failure is a knowing violation of the tax laws, then he is perhaps even more responsible for the adversarial relationship than the over-zealous IRS official.

Tax protestors are not to be tolerated. Each of us is fortunate to be a citizen of the United States. With that citizenship we assume certain responsibilities, one of which is paying taxes. Though we may not like to, we have no right whatsoever to refuse to fulfill this obligation. As a matter of fact, refusing to pay taxes is one of the most unpatriotic acts a citizen can perform. The detrimental effects are many. First, the individuals who fail to pay their taxes keep the tax rates higher for those of us that do. Second, their refusal to pay aggravates the taxpayers/IRS relationship which results in a more strident collection attitude on the part of the Internal Revenue Service and ultimately a higher incidence of taxpayer abuse. Third, and most important, tax protestors make our job of protecting those people that do pay taxes more difficult by fostering the "us-against-them" attitude that currently prevails.

Citizen's Choice members pay their taxes. Citizen's Choice members also recognize that there are legislative improvements to be made in the taxpayer/IRS relationship. Our goal in this area is to make sure that the rights of the taxpayer are protected and that the treatment given the taxpayer is uniformly consistent.

It is this desire for uniformity that forms the backbone of the subject legislation. We have found that most of the problems between the taxpayer and the IRS do not stem from official IRS policy as contained in the Internal Revenue Manual. The manual establishes the guidelines to be followed in

the audit and collection processes. Rather, most taxpayer/IRS problems develop from the discretionary application of this policy.

For example, it is an established IRS policy to allow first time tax delinquents to enter into an installment agreement. This gives the taxpayer up to a year to pay his back taxes. Unfortunately, there are circumstances where a first time delinquent is not permitted this opportunity. This happens for a variety of reasons not the least of which is the "seizure mentality" of some revenue officers in the field. A seizure mentality develops when a revenue officer's advancement is contingent on the number of seizures he makes or the amount of back taxes that he collects. Therefore, entering into an installment agreement can work at cross purposes to an individual's advancement within the IRS.

The subject legislation would codify some of what is already official IRS policy. By doing so, the legislation would help ensure that the treatment of the taxpayer by IRS agents in the field is uniformly consistent. Citizen's Choice, however, is not in a position where it can give a blanket endorsement to this legislation. In particular, Citizen's Choice makes the following suggestions:

1. Property and Wages Exempt from Levy - The dollar amounts suggested in the legislation have been chosen arbitrarily. Citizen's Choice would prefer if the specific amounts reflect a 1984 valuation of the amounts originally set forth in the Internal Revenue Code of 1954.

2. Awarding of Court Cost and Certain Fees - Citizen's Choice believes that the legislation as it presently reads is unclear because it would require the IRS to substantially justify its position in each lawsuit it loses. This would be unnecessarily burdensome and may protract the litigation resulting in even higher attorney fees for the taxpayer. We suggest that the question of court costs and certain fees only be addressed if requested by the taxpayer.
3. Payment of Tax Liability in Installments - Citizen's Choice believes that installment contracts should be binding regardless of any change in the taxpayer's financial condition. The purpose of installment agreements is to ensure that the government receives the money it is due while the taxpayer remains solvent. Because the term of an installment agreement does not usually exceed one year, it is unlikely that many of the administrative hearings called for by the legislation would be completed within the term of the agreement itself. Therefore, the hearing procedure would be unnecessarily burdesome to the IRS and may result in added expenses for the taxpayer who chooses to contest the government's assertion that his financial condition has changed.
4. The Establishment of an Office of Ombudsman - Citizen's Choice recommends that the authority given the Taxpayer

Ombudsman as set forth in the legislation remain as it is; but that the office be established outside the IRS to ensure maximum objectivity.

While Citizen's Choice seeks protection for the honest taxpayer, we are, as stated, sympathetic to the needs of the IRS. The National Commission on Taxes and the IRS recommended that Congress be responsive to IRS budget requests. Statistics indicate that for every dollar spent on the IRS there is a return of up to $5.00 in increased revenues. In an era where there is an annual revenue short-fall of nearly $100 billion, it makes perfect sense to provide the IRS as much help as possible in performing its very difficult job.

But while we recommend additional assistance to the IRS, Citizen's Choice will remain dedicated to protecting the honest taxpayer. The vast majority of Americans meet their tax obligations. They should not suffer at the hands of the IRS because of the actions of a radical and dishonest few.

On behalf of the members and staff of Citizen's Choice, I offer to this Committee and to any of its members in particular, our assistance in any way you might find helpful towards reaching our common goal of a more effective tax administration system. We look forward to working with you to this end.

Senator GRASSLEY. I have three questions. I originally had nine, and they are a repeat of questions that I asked other people so for those six questions I would like to submit those to you in writing.

Mr. LYNCH. That's fine.

Senator GRASSLEY. My first point is in regard to the point you made very early in your testimony about uniformity. The point being that by putting it in the law we will get more uniformity as opposed to having it in regulation?

Mr. LYNCH. That is exactly the point. The discretionary application of the Internal Revenue manual's guideline—has to be stopped. It has to be made clear to the revenue agents in the field that they are required by the law as set forth in the Internal Revenue Code to proceed in a particular fashion, whether it be with regard to uneconomic seizures, whether it is with regard to the release of levy. All of these guidelines are set forth in the Internal Revenue manual. You codify these things—that removes the discretionary aspect. It's part of an effort on the part of the Internal Revenue Service to get across to the taxpayer that, yes, you do have rights; yes, we are going to follow them in all cases.

And so to do it through legislation, to codify it, is the way to go on this.

Senator GRASSLEY. I'm not a lawyer but it seems to me like, as I think of regulations versus statute, I see the regulations an extension of the statute and just as binding as the law, and hence uniformity just as much mandated. What I would hope to accomplish by making it law is to take opportunity for changing the regulations out of the picture, and also maybe giving a little higher level. That is more of a perceived than a real thing.

Mr. LYNCH. And it's perception that is a critical point here, Senator, because the taxpayer needs to feel as if his rights are not only understood but are going to be protected by the people administering the laws. And so perception, I think, can handle a great many of the problems that exists between the taxpayer and the Internal Revenue Service. Right now the perception is that they are out to get you. Plain and simple. Somehow we have to—our group and the work of this committee and the Congress of the United States—have to get across the idea that the Internal Revenue Service is just doing their job, as Commissioner Egger pointed out. Tax collectors have been unpopular since Biblical times.

But nonetheless, I think the American people are smart enough to understand that somebody has got to do the work. As long as they feel that they are not going to have to be raked over the coals while someone is doing the work, I think they are going to respond to the request of the Internal Revenue Service.

Senator GRASSLEY. I would like to ask your opinion on the importance of the provision of S. 2400 that permits taxpayers to seek court relief if a levy is wrongfully imposed by the Government or by a third party.

Mr. LYNCH. I think that's an excellent provision. I think, again, not only is it effective from the standpoint of allowing a taxpayer to redress his legitimate grievances, but it's also important once again from the perceptual standpoint that at least he has this option.

Senator GRASSLEY. Lastly, do taxpayers currently receive any notice explaining their rights before obtaining an interview? Under current law, can both the taxpayer and the Government tape these interviews?

Mr. LYNCH. As I understand the guidelines as contained in the Internal Revenue manual, when a taxpayer comes into an audit hearing—I should say during the process or the conduct of an audit, if he says that I want to tape the interview, the normal practice of the auditor is to dispense with that particular hearing on that particular day until he can obtain a tape recorder so that he can record the interview as well. So, yes, a taxpayer is permitted to record the interview, but normally that may set off an adversarial relationship between the auditor and the taxpayer, which is something that I encourage the members in our organization to be careful of because many problems develop simply because people get off on the wrong foot with one another at the very beginning of the audit process. And one of the ways to get off on the wrong foot is to come in with a tape recorder. And added to that is, well, it's me against you in this, and I'm here to fight it out. I'm trying to dispense with this. And it's a policy of Citizen's Choice to try to dispense with that type of attitude.

Senator GRASSLEY. The first question was about explaining the rights before obtaining an interview. Is that part of the standard procedure?

Mr. LYNCH. As I understand it, yes, it is part of the standard procedure.

Senator GRASSLEY. I would like to have your viewpoint on whether a *Miranda*-type warning, such as right to counsel, right not to incriminate self, might frighten taxpayers.

Mr. LYNCH. I think it's important that these statement that are going to be made by the Internal Revenue Service prior to the conduct in audit, first, not be characterized as *Miranda*-type warnings. I think they can be phrased in such a fashion and be presented in such a fashion as to lessen any interpretation by the taxpayer that you are about to embark on some sort of criminal proceeding, which, of course, an audit is not. An audit is merely an investigation of the financial statement as contained in the taxpayer's filings with the Internal Revenue Service.

I think, though, that an effort should be made, whether it is done in writing or verbally—verbally leaves a lot of room to be desired—that the taxpayer be made known of what his rights are during the situation. But to come in—and David Keating and Jack Wade and I have spoken about this. To come in and have the IRS auditing agent pull out a card as if he is Kojak and he reads the rights to the taxpayer, I think we are off on the wrong foot.

So I think the intention of informing the taxpayer of his rights is what we are looking at. How it is done and how it is applied is going to be very, very important.

Senator GRASSLEY. What about in that sort of a situation—is there any fear that maybe such IRS responsibility would then lead a taxpayer to maybe get a lawyer and be fearful of needing legal counsel when maybe they would not?

Mr. LYNCH. Well, I wouldn't advise any taxpayer, if they can afford it—unfortunately a lot of taxpayers can't—to go into an

audit hearing without some sort of representation. That's just speaking as an attorney. Those taxpayers that go in without representation, I think that it's not going to make much difference one way or the other if they are warned or told what their rights are. If they can't afford an attorney, they aren't going to be going out to get one in any event or an accountant or what have you.

As I said, with regard to them being referred to as the reading of the rights, I think that that can be done. I think that's a step in the right direction. I just think we have to be very careful in how it is worded, and what is trying to be established between the auditing agent and the taxpayer. That the taxpayer does have rights and the auditing agent is going to recognize those rights. That's the important thing.

Senator GRASSLEY. Thank you very much.

I want to say to the public at large, the few of you who have stayed around through 2 hours and 45 minutes of hearing, that I appreciate very much your participation. And this hearing is the first step in the evolution of this legislation through the process of becoming law. And in some respects, it does chart out new ground. And from that standpoint I suppose we have to expect that through hearings like this and a lot of other mechanics that it must go through that obviously it is subject to some change. And I want to take advantage of this closing statement to encourage anybody who participated as well as people who didn't participate to keep in touch with me and my staff as we can look forward, and can receive suggestions on changing the legislation in the process.

The meeting is adjourned.

[Whereupon, at 4:38 p.m., the hearing was concluded.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

Statement on Behalf of the

American Institute of Certified Public Accountants'

Federal Tax Division

Submitted to the

Senate Finance Committee

Holding Hearings on

S.2400

Taxpayers' Procedural Safeguard Act

April 2, 1984

American Institute of Certified Public Accountants
1620 Eye Street, N.W., Washington, D.C. 20006
(202) 872-1890

The American Institute of Certified Public Accountants has more than 207,000 members, many of whom work daily with the tax laws. In reviewing S.2400, the "Taxpayers' Procedural Safeguard Act" we have not only taken into account the interests of our member practitioners but also the interests of taxpayers and the Internal Revenue Service. It is from this important standpoint of balancing the rights and equity afforded to taxpayers with the IRS' responsibility to promptly, efficiently and effectively collect the taxes owed to the Federal government that we have based our comments.

There is a provision of the bill which we find necessary to codify. Sec. 2(a)(4) concerning "information included with notice" details a practice the Service currently and routinely should follow. In actuality, this procedure is omitted and its codification should help ensure the decemination of this information.

We also agree with the Sec. 2(a) provision to change the time frame dealing with notices from 10 days to 30 days. Even though the taxpayer receives the final notice of an intended action of levy after a period of interaction with the IRS of from 4-6 months has already elapsed 10 days is not an adequate period of time to react. Given the seriousness of the proposed action an additional 20 days is not unwarranted.

Presently, the law exempts certain amounts of personal use and trade or business property from levy. The amounts are $1,500 and $1,000 respectively as established by the Tax Equity and Fiscal Responsibility Act of 1982. Because of the recent increase in the exempt amounts and the absence of information indicating their inadequacy we feel the exemptions properly reflect the needs of taxpayers. A moderate increase in the amounts may be called for but that should be determined only after a study of the adequacy of the current exemptions. Raising the exemptions to $20,000 and $10,000 would only cause taxpayers to deploy their assets in such a manner as to avoid taxation.

Sec. 2(c)(3)(A) unduly raises the amount of wages, salary and other income exempt from levy. These altered amounts correspond to a family of four workers earning $25,000 in gross wages. We feel this amount to be excessive and that there is no need to change the original exemption.

On a related matter, there originally appeared to be some merit to the concept outlined in Sec. 2(c)(3)(B) concerning exempt income deposited with certain financial institutions. That surface appeal dicipates, however, when you consider the impossibility of a) tracing deposits to insure that they are "exempt" deposits; and b) administering this provision from the Service's point of view.

In general, we agree with Sec. 2(c)(4)(A) calling for the levy of a principal residence, motor vehicle used for commuting and per-

sonal property used in a trade or business only after prior approval of the district director. Specifically, however, the section dealing with the exemption of personal property used in a trade or business must be coordinated with Sec. 2(c)(2) which describes the exemption of $10,000 of property used in an unincorporated trade or business.

We also find the section dealing with "uneconomical levy" - Sec. 2(c)(4)(B) - to be troublesome. Although in theory we would agree with this provision in reality we can not. Implementing this provision would prove to be costly, time consuming and unadministerable. The determination of "fair market value" of property is not an exact science. This definitional problem has been highlighted with regard to many other sections of the Internal Revenue Code. And given the time sensitivity of enforcement actions, this section would unduly protract the whole process. For the same reasons we would call for the deletion of that portion of Sec. 2(c)(4)(B) that states "(D) the expense of levy and sale of such property exceed the amount of such liability" (regarding release of levy.)

Also with regard to release of levy, we would agree with the section that calls for release when the taxpayer has entered into an installment payment agreement but only if the bill were changed to clarify that the taxpayer must be in compliance with that agreement. Relatedly, we can not agree with the provision for release of levy with regard to substantiation of "necessary" living expenses because of the impossible definitional problem. It would not be administerable. And the immediately following provision addressing the situation where the value of the property net of prior liens exceeds the liability should stipulate that the levy will be released only as long as a lien remains.

We find the provisions of Sec. 3(b)(2) concerning the determination by district court within 20 days after an action is commenced to be unduly time consuming and a conceptually unsound practice for the District Court. It seems unrealistic to impose this major burden on the judicial system as well as to create a major avenue for abuse by taxpayers. This section of the bill provides incentive for taxpayers to ignore the entire tax system, avoid taxation, and then have a right to a determination of his case by what might be the incorrect judicial forum. (Presently, a taxpayer must pay the tax first before he can file a claim for refund with a District Court.)

The offer of installment payments as described in Sec. 5(a) should be limited to a case by case determination. A determination on this basis will protect the rights of those taxpayers who are truly in need. Providing a carte blanche offer would have a negative impact on the payment of taxes under the existing system by the vast majority of the taxpaying public (whose tax liability will not exceed $20,000.)

We feel that the Sec. 5(a) provision concerning a subsequent change in financial condition (notice and hearing) will only serve to provide an incentive to avoid the tax system. It would prove to be an extreme burden on the system as well as, again, unduly protracting the entire process.

We agree with provisions of the bill that call for the abatement of penalties where the taxpayer has relied on the written advice of the IRS. But we can not agree with the Sec. 6(a) call for the abatement of a deficiency and interest. Abatement of deficiency (exclusive of those situations where the employee of the IRS is acting within official and authoritative capacity, i.e., in the issuance of private letter rulings, already provided for in the law) and interest is inconsistent with the remainder of the Internal Revenue Code. Additionally, given the fiscal restraints the IRS is operating under, adoption of this provision would cause a serious curtailment of the advice the IRS would be able to provide.

Sec. 6(b) concerning oral advice given by the IRS would prove to be an unwanted provision. There is a compliance problem inherent in that provision i.e., if a taxpayer is asked where he should send a tax return would the IRS have to inform him that they are not bound by such advice? It might be useful, on the other hand, for the IRS to explain the exact nature of oral advice in certain instructions and other publications it issues. But to implement this provision, as is, would only cause a drain on the respect the public has for the Service.

The convenience of the taxpayer should always be taken into account by the IRS but the Sec. 7(a) mandate concerning interviews of taxpayers would prove to be impractical and unadministerable. It would, additionally, serve to reduce the workflow the IRS would be able to handle and effectively negate the office audit program. We acknowledge the concern but feel it would be better addressed in the Internal Revenue Manual.

We have serious concerns regarding the Sec. 7(a) provision for "safeguards." This section extends the warning given in the context of a criminal investigation to a routine civil proceeding. The creation of a "criminal" atmosphere would only frighten taxpayers and cause ill feelings towards the Service.

Our final comment concerns the Sec. 8 establishment of an office of ombudsman. There is presently a taxpayers ombudsman at the IRS who overseas the Problems Resolution Program among other duties. All indications are that the system is working and serving the public. To tamper with the system by politicizing it would serve no beneficial purpose. However, if this provision were enacted we would disagree with Sec. 8(c) regarding taxpayer assistance orders. The ombudsman <u>should not</u> have the authority

to override the entire system. Rather, he should see to it that the taxpayer is fairly treated within the existing framework. Additionally, if there was enactment of this provision, we feel that the new subsection calling on the ombudsman to report annually to Congress to be a constructive requirement.

Although we agree with and endorse certain concepts in this bill, we find much of it to be counterproductive. The tax system is critical to the proper functioning of our government and we should strive to improve its effectiveness, efficiency and sense of justice while avoiding actions which are counterproductive. The bill appears to create more incentive for people not to pay their taxes rather than adequately protecting their rights. Additionally, it greatly widens the gap between taxpayers subject to the withholding system as it exists and those taxpayers not subject to or only partially subject to withholding.

In the matter of the consideration of S. 2400 - Taxpayers' Procedural Safeguard Act - Scheduled for a Hearing before the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance on March 19, 1984

Written Statement of Edwin I. Davis, CPA
1510 First City Central Building
Houston, Texas 77002
713/652-0818

Submitted in lieu of oral testimony to be included in the official hearing records of the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance

Mr. Chairman, I would like to express my thanks to this distinguished Subcommittee for allowing me to submit a written summation of my views on the proposed legislation this committee has before it, which is designated as S. 2400 and known as the "Taxpayers' Procedural Safeguard Act."

When the House Ways and Means Committee and Senate Finance Committee were considering the enactment of what finally became Section 7430 of the Internal Revenue Code - Awarding of Court Cost and Certain Fees - I testified before a subcommittee of the Finance Committee and the House Ways and Means Committee, I believe, on two different occasions on behalf of such bill.

Again, I am glad to see that our Congress is concerned to the extent that it wishes to consider further safeguards against unwarranted and unnecessary abuses of taxpayer's rights by the Internal Revenue Service.

Although the aforementioned Section 7430 has not been in the law for a sufficient time to produce any substantially noticeable results, nevertheless, in time, it undoubtedly will. Also, I think at the proper time, the Congress should consider extending that particular bill beyond it's expiration.

The subject matter to be dealt with in the proposed S. 2400 is one that is very delicate, insofar as protecting a taxpayer's day-to-day economic rights, and is a very important step in the right direction to maintain and restore, to an extent, taxpayer public confidence in the Internal Revenue Service. Basically, I think one of the problems is that if we believe the Internal Revenue Service and their various testimonies through their representatives, they are not sufficiently aware of what actually happens on a day-to-day basis down in the grassroots of their operations. I have said many times, and say again here, that it is highly necessary to maintain a great degree of public confidence in the self-assessment system in order that we not fall in the same trap that the tax collection agencies in some of the Governmental units in Europe have done, i.e., to an extent, take tax collection as a joke. This can be done, in my opinion, only one way, and that is by being honest, deal with integrity with the taxpaying public, and have a proper independent safeguard. I particularly like one content of the Bill which proposes a new statutory office of taxpayer ombudsman headed by an independent presidential appointee approved by the Senate. This, in my opinion, is about as close as independence can be made into the system. If nothing else, the very structure of such would greatly improve, in my opinion, the respect the taxpaying public has for our Government and it's tax collection personnel and functions. I have always said that down in the ranks of the Internal Revenue Service personnel, where we find the day-to-day contact with the public, it is highly important that a good, fair attitude be manifested with the public because that is about all they see, except

to have some arbitrary form letter written to them, which, in many instances, does not even respond to a question which may have arisen.

No intelligent American can quarrel too seriously with our tax collection system because, despite all of it's flaw, it is about the best system in existence in that it apportions the tax bill based on the amount of a citizen's property, which the Government supposedly protects and secures. Offhand, I know of no other country with our freedom and the security we enjoy with it. With the armament requirements being as great as they are, taxes have to be high to finance such protective operations. Among the exemplary provisions which I believe are in the proposed bill, is the matter of the exemptions provided of various classes of property in the matter of levies and would provide new rights of review of the Internal Revenue Service actions. That, we do not, in my opinion, have under the present system. The independent control of the Internal Revenue Service through something such as a presidentially appointed ombudsman would seem to be a very logical and fair solution to the problem.

A most commendable proposal, in addition to the foregoing, is to change the "prevailing party" requirement that the prevailing party must demonstrate that the position of the United States was unreasonable. Under the new bill, awards would be made if the position of the United States was not substantially justified and the specific requirement that the prevailing party carry the burden of proof on the issue, would be deleted. This, in my opinion, goes a long way toward establishing more rights for the taxpayers and reassuring them of fair and just treatment.

With respect to provisions extending the period of levy and restraint to 30 days, except where jeopardy of collection was involved, I would think it would still be better to let the matter of the jeopardy be determined by an application to a cognizant Federal District Court, rather than have a unilateral determination made by some collection officer in the Internal Revenue Service. To leave them with this authority, i.e., to levy in case jeopardy in collection was indicated, does not remedy one of the bigger means of abuse of power.

With respect to the installment payment of taxes, this would greatly alleviate some of the problems which occur, particularly as long as the installments were being met, if the Government was prohibited from filing liens.

With respect to the increase in property exempt from levy, this is extremely appropriate in view of our expanding economic situation and inflationary prices. This would merely give some recognition to that.

In conclusion, Mr. Chairman, let me say that I think this distinguished Committee has embarked on yet another mission of great importance to the taxpaying public at a time when maintaining the confidence of such public is becoming more essential each day. This Committee is indeed to be commended for taking up such a fine and much needed piece of legislation to continue the attempt to restore confidence of the taxpaying public. I sincerely thank you, Mr. Chairman, and the remaining members of this Committee for allowing me this opportunity to present my views.

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March 8, 1984

The Honorable David Durenberger, Chairman
Senate Finance Committee Subcommittee on Health
375 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Durenberger:

I have just learned that you have scheduled a hearing on Medicaid and freedom of choice on March 19, 1984. Limitation of Direct Access to Specialist Care has been a subject of great concern to the American Academy of Dermatology for a number of years and prompted the Academy to sponsor a meeting on this issue in 1981. I have enclosed a transcript of this meeting for your interest. The Academy will sponsor a second meeting on this issue on June 14, 1984 at the Mayflower Hotel in Washington, D.C. and we will be extending invitations to you and your staff in the near future to attend this meeting.

May I request on behalf of the American Academy of Dermatology that the enclosed articles, one entitled, "Behold, The Gatekeeper Cometh" and the other entitled, "The Socioeconomic and Political Future of Gastroenterology. Part II. Primary Care Network - The Gatekeeper" be entered in the hearing record as they relate specifically to the issue of patient free choice of physician.

Thank you in advance for the opportunity to express our views.

Yours sincerely,

Peyton E. Weary, M.D., Chairman
Department of Dermatology

PEW/bcd

Enclosure

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The Socioeconomic and Political Future of Gastroenterology. Part II. Primary Care Network—the Gatekeeper

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Increasing interest in the "Gatekeeper" concept (Primary Care Network or PCN, Case Management System) by the Federal and state governments as a means of reducing accelerating medical costs in Medicaid programs deserves careful analysis by patients and health care providers.

HOW DOES THE SYSTEM WORK?

The patient chooses or is assigned to an approved primary care physician (or HMO) who in turn is responsible for the overall medical care of that patient and must approve all diagnostic studies, specialty referrals, hospitalizations, etc. A normal monthly fee is provided the physician by the contractor (usually the state Medicaid agency) as well as reimbursement for each patient encounter. All diagnostic studies, referrals, hospitalization, etc. are paid for only if approved by the PCN physician. This physician may or may not be at financial risk, but if their individual utilization and cost averages exceed certain percentiles, the performance of the physician will be "reviewed" with resulting warnings or removal from the program. The patient may or may not have freedom of choice in choosing a PCN physician or a referral physician, but many proposed plans are directed toward eventual elimination of the patient's freedom of choice in selecting a physician. In addition, because not all physicians will participate in the program, limitation of freedom of choice is inherent in the Gatekeeper concept.

WHAT'S HAPPENING

Federal law originally guaranteed the right of each and every Medicaid patient to choose the physician of their choice. However, the Omnibus Reconciliation Act of 1981 (Section 2175, Public Law 97-35) approved by Congress provided states with the option of applying for waivers of their right to choose health care providers without intervention. Armed with this far-reaching legislation, the Health Care Financing Administration proceeded to publish its interim final regulations, BPP-181-SC, "Medicaid Programs: Freedom of Choice: Waivers of Exceptions to State Plan Requirements" 46 Federal Registry 48525, October 1, 1981. The American Society of Internal Medicine objected, stating to Health Care Financing Adminstration (1) that the regulations should have been published first as a notice of proposed rule-making to allow input by interested parties "consistent with hearing and comment requirements" (House Report 97-208, page 964) and (2) that "the regulations are flawed because they provide inadequate guidance to states on how to make their Medicaid programs most cost-effective without denying patient access to quality medical care" (1). The advice went unheeded. Even a government agency questioned the regulations. The United States General Accounting Office stating that "current regulations contain little guidance on the standards your Department will apply in evaluating whether state requests for waivers of recipients' freedom of choice meet the requirements contained in the law" has recommended to Secretary Schweiker of Health and Human Services "that you provide additional guidance to states on the information necessary to show compliance with the law for waivers to limit freedom of choice of Medicaid recipients" (2).

The legislation and regulations have subsequently led to the development of the Gatekeeper concept for Medicaid enrollees. Actually the essentials of the program have been in place in some existing HMO's. The American College of Physicians has essentially approved the Gatekeeper HMO model and has stated that "a legitimate function of HMO patient management may include organizing its medical staff in such a way that limits direct access by patients to specialist care." To protect patient rights, the American College of Physicians adds "prospective HMO enrollees should be advised of any patient's self-referral limitations and advised of the circumstances under which they can seek alternative services" (3).

One needs only to peruse the proceedings of the National Governors Association Conference on Medicaid and Primary Care Network/Case Management Systems, December 1981, to realize the profound impact the Gatekeeper concept will have on medical prac-

tice as we know it today. "The Network consists of individual or groups of primary care physicians and is augmented by a panel of specialists selected by the PCN or each primary care physician. Patients are 'locked in' to their primary care physician who approves all specialty care. Non-emergency self-referrals are not reimbursed. The primary care physician is financially at risk for primary care, specialty care and hospitalization. Reimbursement arrangements, however, may vary. They can be fee-for-service with a percentage of the fee held back to cover costs in excess of targeted amounts. If expenditures are less than expected, these 'hold back' funds are distributed at the end of the year as a bonus. Reimbursement can be a straight capitation arrangement in which the physician receives a predetermined payment for providing services to an enrollee. In either case, the primary care physician reviews and approves all expenditures made on behalf of his patient" (4).

Michigan has established a PCN program to eventually include 323,000 of Detroit's 400,000 Medicaid eligibles. Maryland's less restrictive program began July 1, 1982. California's PCN plan for Santa Barbara and Monterey counties will include negotiated fees not only for Gatekeepers, but for specialists also. Effective January 1983, the California state Medicaid program (Medi-Cal) will be allowed to negotiate contracts with physicians to provide services to the poor on a prepaid basis. In St. Louis, MO, and Grand Junction, CO, patients will be assigned to PCN physicians and will *not* have the right to choose the physician. *Medicare* patients in Baldwin County, Georgia may join an experimental PCN program that is voluntary at this time. Arizona's waiver has been approved and will allow the state to negotiate contracts with hospitals and physicians. The Arizona Health Care Cost Containment System, known as ACCESS, is scheduled to enroll up to 100,000 Medicaid patients during September 1982. Public and business employees can also join, thereby spreading the financial risk for the state. Of interest is the point that long-term or nursing home care which consumes 50% of the health care budgets of some states will not be assumed by the state. It will be left to the county governments. Whether in the form of a PCN, HMO or Individual Practice Association, the Gatekeeper concept for Medicaid is being considered by other states including Hawaii, Massachusetts, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin. Others will undoubtedly join this list.

The PCN has furthermore extended into third party insurors and HMO's including Blue Shield, Prudential, INA, Wisconsin Physician Services, Group Health Plan of Northeast Ohio, and Safeco's United Health Care (now up for sale). This list is growing and will probably continue to do so.

ADVANTAGES OF THE PCN

Advocates find the Gatekeeper concept appealing for the following reasons (4).

1) PCN's can reverse expensive financial incentives in the fee-for-service system. Although physicians receive only 19% of total health care expenditures, they are responsible for 75% of total health care costs in that they control decisions on tests, procedures, and hospitalizations. By making the Gatekeeper medically responsible and financially at risk, a point of accountability is established. "The professional in charge will typically have a less expensive style of practice than the specialist." Furthermore, states may become "prudent buyers," selecting those providers who furnish the most cost-effective care.

2) PCN's constrain patient misuse of the system. By locking patients into a Gatekeeper and denying reimbursement for nonemergency out-of-plan services, unnecessary "doctor shopping" and costly nonemergency visits to emergency rooms and hospital outpatient departments can be curbed. Patients who abuse the system and incur unnecessary medical care expenses can be identified earlier.

3) PCN's guarantee clients a point of entry into the health care system. PCN's guarantee enrollees access and service to a physician for as long as the client accepts and adheres to conditions of PCN membership.

4) PCN's are more flexible and easily established than traditional HMO's. PCN's do not require new institutions or large alterations in existing relationships that physicians have with hospitals or other providers. Hence, they may be established more easily, effectively, and perhaps less expensively.

5) PCN's can lead to improved continuity of care. Since a client is assigned to or chooses a particular Gatekeeper physician and that physician is responsible for total medical care during the period the patient adheres to the PCN membership conditions, continuity of care should improve.

DISADVANTAGES OF PCN

As with any health care system, PCN's have built-in disadvantages centering around quality, accessibility, and costs.

1) Marginal care. Major differences in quality of care exist among physicians be they primary care, specialists, board certified physicians or not. By assignment, PCN's may "lock-in" a patient into the care of marginal physicians.

2) Restricted services. By increasing the Gatekeepers control over the patient and placing him at financial risk, the Gatekeeper may not allow the patient to receive needed services, consultations, and care. This adverse incentive could lead to inadequate care.

3) Over-utilization of services. If the Gatekeeper receives a fixed payment for primary care and is not at risk for referrals, the Gatekeeper may refer as much care as possible to other physicians in order to maximize his income in relation to time utilized for care of the patients.

4) Under-utilization of services. If the Gatekeeper receives a fixed monthly payment for primary care regardless of patient encounters or not, he may discourage or delay patient visits thereby providing more time for other matters.

5) Adverse selection. If Medicaid enrollees have the option of joining a PCN or remaining in the fee-for-service system, the Gatekeeper could encourage his healthiest patients to join the PCN. The healthy patient would use or could be encouraged to use the PCN services infrequently. The Gatekeeper would continue to receive the monthly case management fee, to his financial benefit. The chronically ill patient could be encouraged to remain in the fee-for-service program to maximize reimbursement.

6) Physician overload. Patients may sign up with the "best" physician thereby over loading his practice with healthy, ill, or both types of patients.

7) Physician conflict. "The success of PCN's rests, however, with the ability of the primary care physicians to monitor and, if need be, to challange the authority of specialists. It is a role with which many physicians will be unfamiliar and it is not one to which many will easily adjust" (4). The primary care physician may not be willing or may be unable to fulfill this requirement. Regardless, if he does or does not, significant conflict for the Gatekeeper is inevitable.

8) Capping. For specialty referral care, the number of return visits may be restricted or "capped," thereby limiting the access of patients to specialty care.

9) Restriction of patients' freedom of choice to their physician. A basic principle of a PCN is that the Gatekeeper will approve any additional physician referrals. In contrast, the medical care system in the United States has been built on the principle of freedom of choice for both the patient and the physician. The right of freedom of choice is removed in the Gatekeeper/PCN setting.

10) Anticompetition. Medical practice is inherently competitive resulting in the necessity of a physician to remain current in his skills. If the Gatekeeper has total control, there will be no competition and no incentive to continue to upgrade his skills. Mediocrity is the anticipated result.

11) Delayed diagnosis and treatment. With incentives to reduce costs and limit services, delays in diagnosis and treatment can be reasonably anticipated. Short-term cost savings may be realized, but the short- and long-term effects on *1*) the patient's emotional and physical well-being, *2*) the medical consequences, and *3*) the economic burdens of delayed diagnoses and treatments must be considered.

12) Malpractice issue. With incentives to limit services and referrals and with the resulting anticipated delays in diagnosis and treatment, the Gatekeeper places himself in an exceptionally vulnerable position for malpractice claims. "A general practitioner who does not refer his patients to a specialist, where under the circumstances a reasonably careful and skilled general practitioner could and would do so, may be held to the standard of a specialist in the field" (5).

13) Antitrust implications. This issue is not settled but restricting program providers in some situations can have antitrust implications.

14) Union activities. State agencies that contract with primary care physicians to serve as Gatekeepers may well find themselves negotiating with Gatekeeper physicians in a formal or informal collective bargaining setting for working conditions, management fees, etc. Unless the Gatekeeper is dependent upon the agency for a major portion of his income, the Gatekeeper's "total control" of the health care system for enrollees will provide tremendous leverage for the physicians.

15) State administrative systems may be inadequate. Changing from a fee-for-service to a Gatekeeper system will necessitate significant changes for the state to consider. For example, over-utilization *and* under-utilization must be monitored. Enrollment, disenrollment, and grievances are but a few of many additional problems to be carefully considered by the state agency before implementing the PCN.

16) Physician monitoring. One state Medicaid medical director has indicated that physician monitoring will likely entail review of the physician's office records (6). Other states will presumably follow this route.

DISCUSSION

The fact that Medicaid presents a problem for states because of increasing costs is not questioned. How to deal with the costs while assuring quality of care, accessibility to the best care available, freedom of choice for the patient and the physician, and the American medical tradition of free-for-service is a problem. The PCN/Gatekeeper concept is one alternative solution being considered by increasing numbers of states, HMO's, IPA's, third party insurors, and the Federal government. By assigning each patient to a primary care Gatekeeper physician who has total responsibility for medical care and who is financially at risk, advocates believe costs can be constrained.

Let there be no question, although quality of care and accessibility are mentioned by advocates, the primary purpose of the Gatekeeper concept is cost containment. Advantages have been listed earlier in this

paper. These are immediate concerns, but long range consequences must also be addressed. Initially, the impact may be cost savings, but access and quality will suffer. The PCN physician will undergo increasing scrutiny by bureaucrats to hold costs down. Patients will likely have limited access to specialty care and the technology that has helped produce the world's finest medical care system.

Some have stated that the Gatekeeper/PCN system is akin to the British National Health Service (7). If as proposed, the Federal government takes over Medicaid in addition to its existing Medicare program, and if the Gatekeeper concept remains in place, we will indeed have taken a major step toward a socialized national health program in the United States.

How should the physician prepare for this rapidly developing concept? Individual physicians and state specialty societies should urge the state medical association to become fully knowledgeable about state government activities in Medicaid and PCN's. With its vast resources, the state medical association is indeed in the best position to impact on the development of PCN programs. State medical association and physician input and involvement early in the planning process is essential! Typically there will be a committee of physicians from the medical association that will be asked by the state government to assist in developing alternatives to deal with Medicaid costs, including the PCN programs. Pilot programs with careful evaluation over at least 1 to 2 years are desirable. These physicians *must* be thoroughly aware of all ramifications of these programs for they are representing all physicians in their states in an area that has far-reaching consequences for patients, physicians, and our medical system.

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Commentary

Behold, the Gatekeeper Cometh

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The insidious intrusions of arbitrary restrictive patterns of health care delivery that limit direct access of patients to specialist care were once largely confined in this country to voluntary health maintenance organization-independent practice association (HMO–IPA) systems and the military service. In 1981, 87% of surveyed HMOs and IPAs restricted patient access to specialist care to some extent. Such limitation is now becoming more widespread through the creation of primary-care networks, case management, and experimental programs under Medicaid. Limitation of direct access to specialists will impact substantially on the practice patterns and quality of dermatologic care, because primary care physicians and physician extenders who will control the referral system often will attempt to treat skin conditions even though they frequently misdiagnose the condition.[1,2] Further, as is often the case, referrals to specialists often will be limited to one visit only, with no opportunity for the specialist to establish a satisfying doctor–patient relationship or to evaluate the effectiveness of treatment. The following is an analysis of this phenomenon and an assessment of what has been accomplished or remains to be done to combat this trend.

Definitions

Before proceeding, a few definitions are necessary. A gatekeeper may be a primary care physician or occasionally another specialist or physician extender to whom a defined population is assigned and who is required either to provide all health care or to authorize care from other specialists, if necessary, for the assigned individuals. Gatekeepers may or may not be paid on a capitated basis and may or may not be financially at risk for all care provided.

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A primary care network may be likened to an HMO without walls, in which a group of primary care providers contract to serve as gatekeepers for a defined population, such as all Medicaid patients in the city or county.

Legislation enacted in 1981 permitted states to request *waivers of freedom of choice* for Medicaid beneficiaries so they could be required to participate in arbitrarily restrictive programs limiting direct access to specialist care. Ten states have received such waivers, and at least eight more have applied.

Medicaid programs are allowed without waiver to restrict (lock in) selected abusers of the system to case managers or gatekeepers. This is referred to as *Medicaid lock-in*.

Case management applies to various types of restrictive systems.

Understanding the Gatekeeper Concept

To understand the gatekeeper pattern, it is useful to view it from three perspectives: theoretic, operational, and motivational.

Theoretic Perspective

Most physicians who promote or defend the gatekeeper pattern do so on the following theoretic basis: (1) optimum benefits from a complex health care system derive from coordination and continuity of care, such as that provided by a single physician or a small group of physicians; (2) many patients are incapable of deciding what type of physician is best equipped to deal with a specific complaint and require the services of a

broadly based primary care physician to assist in the decision; (3) for the above reasons, all care should originate with a primary care provider who will personally provide continuing and coordinated care and arrange for appropriate consultation when indicated.

While this may seem paternalistic for an increasingly sophisticated society, it does have many advocates; however, it seems appropriate to assume that if this is in fact logical, then it would be more appropriate to educate patients, rather than coerce them to behave this way.

Operational Perspective

The gatekeeper pattern has been a feature of military and socialized medicine for many years. It has proliferated in this country in the past two decades in the expanding HMO–IPA market, where it has become widely accepted dogma that to be successful, an HMO or IPA should enforce a gatekeeper pattern. However, there are a number of examples of successful HMOs, such as Kaiser-Permanente of northern California, that permit direct access to a number of specialists and find this to be cost-effective.[3]

Whatever the rationale that prompted HMOs and IPA to select a gatekeeper pattern, they have provided a protected environment for this pattern and have thus permitted it to become well-established. Had the gatekeeper pattern remained confined to the HMO–IPA system, it could be defended as being a voluntary form of arbitrary exclusion, because patients voluntarily enroll in such a system and thereby accept the limitations imposed. Some would, however, question whether the implications are fully understood by the average HMO–IPA enrollee. Unless they are aware of the possibility that reduction in the use of specialists may delay or compromise the initiation of the most effective treatment, they cannot be said to be appropriately instructed.

The situation has changed dramatically in the past 2 years, however, because it is no longer voluntary for selected groups of Medicaid patients who are required to participate in the restricted system that imposes arbitrary exclusion of direct access to specialist care. Further, intensive promotional efforts are underway by such powerful organizations as The National Governor's Association[4] and The Robert Wood Johnson Foundation[5] to extend the scope of such a pattern. In addition, pilot projects are underway or under consideration that would test such a system for Medicare and private insurers. It is also important to note that the proposal of Senator Kennedy for comprehensive national health insurance that surfaced several years ago required gatekeepers as a basic condition. An excellent summary of the current activities has recently been presented by Iglehart.[6]

Motivational Perspective

Unquestionably, the use of gatekeepers is perceived as a method to reduce health care costs, particularly if the gatekeeper is paid by capitation and is financially at risk for provision of all care. Conventional wisdom suggests that lower costs will result if the lowest cost provider can serve as a sieve and will refer only what exceeds his or her capabilities, particularly with financial disincentives for referral. However, two facts must be considered: (1) there is no documentation to support a belief that the gatekeeper is, in fact, a cost-effective device, because studies have not yet been done; (2) it is probable that the physician's assistant or nurse practitioner, not the physician, will prove to be the ultimate gatekeeper, as in many HMOs.

Potential Problems of the Gatekeeper Concept

Loss of Free Choice of Physician

Those who contend that arbitrary exclusions that eliminate free choice of physician are appropriate for HMOs, IPAs, or Medicaid patients miss the point, because once we abandon a cherished principle for any group of patients, we can no longer defend it, for if it has true merit, it should be applicable to all. Further, reimposition of a two-class system of care is retrogressive.

A Template for Socialized Medicine

A strongly enforced gatekeeper pattern is a major component of most systems of socialized medicine. It seems that the evolution of this pattern in this country would draw us one step closer to such a system.

An Anticompetitive System

Paradoxically, the federal government, while promoting competition in the health care field, also is actively encouraging a system that would clearly stifle competition between primary care physicians and specialists. It seems inadvisable to make one group of professionals entirely dependent on another for whatever reason.

Reduction in Quality of Care

To relegate specialty practice to second-class status will impact negatively upon the quality of health care and the advancement of scientific knowledge. Those who would question this statement simply have no conception of the profound impact specialization has had upon both aspects.

What Has Been Accomplished to Counteract this Trend?

1. January 1981—testimony was presented to the American Medical Association (AMA) Council on Medical Services.
2. April 1981—a meeting was sponsored by the American Academy of Dermatology in Washington, DC on Direct Access to Specialist Care.[7]
3. June 1981—a resolution was submitted to the AMA but was never brought to the floor.
4. March 1982—a presentation was made to The Interspecialty Cooperation Committee of The Council of Medical Specialty Societies (CMSS); this led to the creation of an Ad Hoc Committee on patient access to specialist care by the organization.
5. August 1982—a presentation was made to Mr. Arthur Lerner of The Bureau of Competition, Federal Trade Commission.
6. November 1982—as presentation was made to the CMSS Ad Hoc Committee.
7. January 1982—a presentation was made to Dr. Glenna Crooks, Deputy Assistant Secretary for Health Planning and Evaluation, Department of Health and Human Services.
8. March 1983—the CMSS Committee recommended this as a major topic for discussion at a future CMSS Meeting.
9. March 1983—a presentation was made to the AMA Health Policy Agenda Work Group on Delivery Mechanisms.

What Must Be Done Now?

To develop a truly effective strategy to combat the gatekeeper pattern, I believe that we must acquire data to support our belief that specialists can deliver cost-effective care, because it is patently clear that the major motivational force behind this trend is monetary. Cost-effectiveness studies are difficult and costly but can be done and done well. Such a study has already been designed but has yet to be endorsed by the Academy and, thus, cannot proceed. Those who oppose such a study contend that they fear it will not prove our case. I believe it will, but even so, we must know the facts; and if we are not in every instance cost-effective, we must strive to become so, because, clearly, in an increasingly competitive health-care marketplace, the future will belong to the cost-effective physician.

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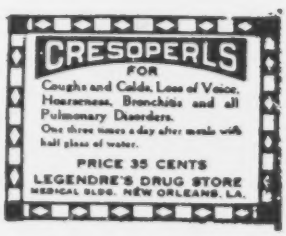
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